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# TEINDS AND AGRICULTURE

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# TEINDS AND AGRICULTURE

*AN HISTORICAL SURVEY*

BY

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TO
MY WIFE

# PREFACE

THERE are in existence certain works upon teinds, notably those by Forbes (1705), Connell (1815), and Buchanan (1862). These were written by lawyers, and deal with legal difficulties arising out of disputes about stipend between heritors and ministers; the interests of the farmer do not emerge, and the bearing of teind upon agriculture is not considered. In the present study an attempt has been made to correlate teinds with the farm rather than with the law court.

As teinds were an importation into Scotland by the Roman Church, it was necessary first to search for their origin in Hebrew, Greek, and Roman literature, and especially in the *Sacrorum conciliorum nova et amplissima collectio*, the monumental records of the Roman Church Councils. In Scotland the chief sources of information were the Statutes of the Church of Scotland, the Chartularies of Cathedrals and Monasteries, the Acts of Parliament, the Decisions of Law Courts, Official Views of Agriculture, and Hansard. The most laborious part of the whole was the searching of the documents in Medieval Latin, which had to be systematically reviewed, as they contained information not elsewhere available.

Teinds are a notoriously complex and confusing subject. An attempt has been made to set forth information collected in as simple a form as possible. Where the extracts in Scots from ancient laws are difficult to read, the spelling has been modernized and the fact noted in the text.

It is hoped that this historical survey of teinds from the earliest times up to the Church of Scotland (Property and Endowments) Act, 1925, with the references to the original sources of information, will be of use to landowners, clergymen, agents and others dealing with teinds in the course of business, and also of general interest to a wider public.

I wish to acknowledge my indebtedness to Dr. J. B. Orr, of the Rowett Institute, at whose suggestion the research on the influence of teinds on agriculture was undertaken. The information collected was originally intended to be used in connexion with a projected history of the development of agriculture in Scotland. When the information was brought together, however, it was considered that it was of sufficient interest and importance to warrant a separate publication.

ALEXANDER A. CORMACK.

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ABERDEEN.
*May*, 1930.

# CONTENTS

PREFACE . . . . . *page* vii

CHAPTER I. THE ORIGIN OF TEIND SYSTEM . . *page* 1.

Definition. Medieval conception. In Buddhist religion. In Greek religion. In Roman religion. In Jewish religion. In New Testament. In patristic literature. In civil law of Charlemagne. In Saxony. Approved by King Athelstan in England, and by Malcolm Canmore in Scotland.

CHAPTER II. INTRODUCTION OF TEIND SYSTEM TO SCOTLAND . . . . . *page* 16.

Loss to Scotland of teind documents by shipwreck and fire. Celtic religion and remains. Celtic Church. *Book of Deer*. Early charters to cathedrals. Mortlach. Origin of Parishes. Ednam. Patronage of church. William the Lion enforces payment of teinds. Example of his law in Moray. Kings give example to nobles. Personal teinds due by all subjects. Early civilization around monasteries.

CHAPTER III. EARLY CLASSIFICATION OF TEINDS AND METHODS OF COLLECTION. . . . . *page* 29.

Teinds personal and teinds real. Great, rectorial, or parsonage teinds. Small or vicarage teinds. Teinds industrial and natural. De jure divino and de jure civili. Lands teind-free, cum decimis inclusis. Teind not always a tenth. Leading of teinds. Ipsa corpora. Brawling. Teinds let on tack. Feudal lords interfere. Excommunication. Second teinds. Teinds of animals. Of calves, lambs, and young pigs. Of cheese. Of milk. Of eggs. Of chickens. Of young geese. Animals feeding in two parishes. Fish teind. Disputes between clerics. Teind of wood. Unscrupulous laymen. 'Sons of Perdition.'

CHAPTER IV. THE ECONOMIC ADVANTAGES AND DISADVANTAGES OF TEINDS IN THE MIDDLE AGES . . *page* 45.

Advantages. Priest, poor, and church fabric provided for. Teind varied with crop. No transport beyond parish. No money in circulation. Friendliness of priest and people.
Disadvantages. No subsistence allowance before teinding. Uncertainty of amount. Inconvenience of method of teinding. Cost of collection high. Tacksmen hated. No allowance for seed, wages, &c. Heavy burden on poor peasant. Affected agriculture only. Teinds discouraged development of land. Teinds not used wholly within parish.

CHAPTER V. ABUSES IN METHODS OF COLLECTION AND IN APPLICATION OF TEINDS IN THE MIDDLE AGES . *page* 54.

Teind originally for three purposes—priest, poor, and church fabric. Bishops claim a share. Laymen interfere and intromit with teinds. Leasing of teinds by bishops and abbots. Non-residence of priest in parish. Organization of cathedrals on English models. Misdirection of teinds away from parishes. Pittance to poor vicar. Cistercians teind-free. Corruption in medieval Church. Society of Jesus to safeguard the Church. Attempts by the Scottish Provincial Council in 1549 to reform Church from within. Reforms suggested in 1558 by Lords and Barons. Reforms suggested in 1558–1559 by the last Scottish Council of the Roman Church. Beggars' Summons. Break-up of Feudal System. Services rendered by monasteries and cathedrals to agriculture. Fall of Roman Church. Scotland described by foreign visitors.

CHAPTER VI. ATTEMPTS TO REGULARIZE TEINDS DURING THE REFORMATION . . . . . *page* 79.

Roman religion discontinued by Scottish Parliament in 1560. Nobles assume benefices in commendam. Tulchan bishops. Reformers claim teinds. Annexation Act of 1587. Temporal lordships. Lords of Erection. Total property of Roman Church. Thirds of Benefices. *First Book of Discipline*. *Second Book of Discipline*. Leasing of teinds. Roman Church in Highlands and Islands. Teind Legislation 1560–1633. Acts for timeous teinding, 1587, 1606, 1612, and 1617. Bishops restored in 1606. Stipend from teind in 1617. Glebe and pasture for minister. Minimum stipend 500 merks or 5 chalders. Revocation of King Charles I in 1625. Alarm of gentry. Deputation to London. Settlement with gentry. Part of teinds claimed by King. King's Annuity. Teinds to be sold by holders to landowners. Ratification by Parliament in 1633. Consolidation of teind rights with land rights.

CHAPTER VII. EFFECTS OF THE POLITICAL DISTURBANCES OF THE SEVENTEENTH CENTURY ON TEINDS . *page* 109.

Amount of teind. King sells Annuity to Earl of Callander. Commissions for Plantation of Kirks and Valuation of Teinds. Commonwealth. Patronage temporarily abolished. Political unsettlement of the century. Bishops and patronage restored in 1660. Leasing of teinds again permitted. Valuation of teinds slow. Locality of teinds. Episcopacy abolished at Revolution. Union of Parliaments. Commissions replaced by Lords of Council and Session. Decisions in teind disputes 1548–1695.

CHAPTER VIII. THE FIXING OF VALUES OF TEINDS IN THE EIGHTEENTH AND NINETEENTH CENTURIES . . *page* 125.

Valuation of teinds progressing in times of peace. Inflation of money. Money Scots disappears. Ministers plead for augmentation of stipend. Augmentation granted in 1790. Duties of heritors as teind-holders, and how performed. Neglect of Church buildings; neglect of poor; feuars share

burdens. Decisions in teind disputes 1734–1821. Teinds as described in *Views of Agriculture* about 1800 throughout Scotland. The *Code of Agriculture*. Tithes a heavy burden upon agriculture in England. Contrast with Scotland by James Anderson in *Essays relating to Agriculture*. Surviving dread of teinds among tenants after valuation.

CHAPTER IX. MODERN LEGISLATION AND TEINDS. *page* 156.

Development of Agriculture in Scotland. Teinds when valued a smaller burden on agriculture. Further fall in value of money through war in America and with Napoleon. Legal augmentation of stipend every twenty years (1808). Augmentation in grain. Money stipend converted to grain. Stipend of grain paid in money at fiars prices. Process of Augmentation. Examples. Disappearance of small teinds. State guarantees a minimum stipend of £150 (1810). State gives further aid (1824). Forty-three chapels established by State in Highlands (1824 and 1825). Talk of disestablishment. Disruption. Other sects. Basis and Plan of Union. Church of Scotland Act 1921 for spiritual independence. Teinds Bill 1920. Committee on teinds 1922. Church of Scotland (Property and Endowments) Act, 1925. Full text of clauses relating to teinds. Opposition in House of Lords. Redemption of teinds is rejected by heritors. Land charge. Standardized stipend. Arguments in House of Commons for and against the Act. Quoad sacra parishes. Burgh teinds and burgh churches. Conclusion.

APPENDIX I. Notes on Patronage. . . . . *page* 186.

APPENDIX II. Redemption by State of Exchequer Grants. *page* 188.

BIBLIOGRAPHY . . . . . *page* 189.

INDEX . . . . . *page* 195.

CHAPTER V. ABUSES IN METHODS OF COLLECTION AND IN APPLICATION OF TEINDS IN THE MIDDLE AGES . *page* 54.

Teind originally for three purposes—priest, poor, and church fabric. Bishops claim a share. Laymen interfere and intromit with teinds. Leasing of teinds by bishops and abbots. Non-residence of priest in parish. Organization of cathedrals on English models. Misdirection of teinds away from parishes. Pittance to poor vicar. Cistercians teind-free. Corruption in medieval Church. Society of Jesus to safeguard the Church. Attempts by the Scottish Provincial Council in 1549 to reform Church from within. Reforms suggested in 1558 by Lords and Barons. Reforms suggested in 1558–1559 by the last Scottish Council of the Roman Church. Beggars' Summons. Break-up of Feudal System. Services rendered by monasteries and cathedrals to agriculture. Fall of Roman Church. Scotland described by foreign visitors.

CHAPTER VI. ATTEMPTS TO REGULARIZE TEINDS DURING THE REFORMATION . . . . . *page* 79.

Roman religion discontinued by Scottish Parliament in 1560. Nobles assume benefices in commendam. Tulchan bishops. Reformers claim teinds. Annexation Act of 1587. Temporal lordships. Lords of Erection. Total property of Roman Church. Thirds of Benefices. *First Book of Discipline. Second Book of Discipline.* Leasing of teinds. Roman Church in Highlands and Islands. Teind Legislation 1560–1633. Acts for timeous teinding, 1587, 1606, 1612, and 1617. Bishops restored in 1606. Stipend from teind in 1617. Glebe and pasture for minister. Minimum stipend 500 merks or 5 chalders. Revocation of King Charles I in 1625. Alarm of gentry. Deputation to London. Settlement with gentry. Part of teinds claimed by King. King's Annuity. Teinds to be sold by holders to landowners. Ratification by Parliament in 1633. Consolidation of teind rights with land rights.

CHAPTER VII. EFFECTS OF THE POLITICAL DISTURBANCES OF THE SEVENTEENTH CENTURY ON TEINDS . *page* 109.

Amount of teind. King sells Annuity to Earl of Callander. Commissions for Plantation of Kirks and Valuation of Teinds. Commonwealth. Patronage temporarily abolished. Political unsettlement of the century. Bishops and patronage restored in 1660. Leasing of teinds again permitted. Valuation of teinds slow. Locality of teinds. Episcopacy abolished at Revolution. Union of Parliaments. Commissions replaced by Lords of Council and Session. Decisions in teind disputes 1548–1695.

CHAPTER VIII. THE FIXING OF VALUES OF TEINDS IN THE EIGHTEENTH AND NINETEENTH CENTURIES . . *page* 125.

Valuation of teinds progressing in times of peace. Inflation of money. Money Scots disappears. Ministers plead for augmentation of stipend. Augmentation granted in 1790. Duties of heritors as teind-holders, and how performed. Neglect of Church buildings; neglect of poor; feuars share

burdens. Decisions in teind disputes 1734–1821. Teinds as described in *Views of Agriculture* about 1800 throughout Scotland. The *Code of Agriculture*. Tithes a heavy burden upon agriculture in England. Contrast with Scotland by James Anderson in *Essays relating to Agriculture*. Surviving dread of teinds among tenants after valuation.

CHAPTER IX. MODERN LEGISLATION AND TEINDS. *page* 156.

Development of Agriculture in Scotland. Teinds when valued a smaller burden on agriculture. Further fall in value of money through war in America and with Napoleon. Legal augmentation of stipend every twenty years (1808). Augmentation in grain. Money stipend converted to grain. Stipend of grain paid in money at fiars prices. Process of Augmentation. Examples. Disappearance of small teinds. State guarantees a minimum stipend of £150 (1810). State gives further aid (1824). Forty-three chapels established by State in Highlands (1824 and 1825). Talk of disestablishment. Disruption. Other sects. Basis and Plan of Union. Church of Scotland Act 1921 for spiritual independence. Teinds Bill 1920. Committee on teinds 1922. Church of Scotland (Property and Endowments) Act, 1925. Full text of clauses relating to teinds. Opposition in House of Lords. Redemption of teinds is rejected by heritors. Land charge. Standardized stipend. Arguments in House of Commons for and against the Act. Quoad sacra parishes. Burgh teinds and burgh churches. Conclusion.

APPENDIX I. Notes on Patronage. . . . . *page* 186.

APPENDIX II. Redemption by State of Exchequer Grants. *page* 188.

BIBLIOGRAPHY . . . . . *page* 189.

INDEX . . . . . *page* 195.

CHAPTER V. ABUSES IN METHODS OF COLLECTION AND IN APPLICATION OF TEINDS IN THE MIDDLE AGES . *page* 54.

Teind originally for three purposes—priest, poor, and church fabric. Bishops claim a share. Laymen interfere and intromit with teinds. Leasing of teinds by bishops and abbots. Non-residence of priest in parish. Organization of cathedrals on English models. Misdirection of teinds away from parishes. Pittance to poor vicar. Cistercians teind-free. Corruption in medieval Church. Society of Jesus to safeguard the Church. Attempts by the Scottish Provincial Council in 1549 to reform Church from within. Reforms suggested in 1558 by Lords and Barons. Reforms suggested in 1558–1559 by the last Scottish Council of the Roman Church. Beggars' Summons. Break-up of Feudal System. Services rendered by monasteries and cathedrals to agriculture. Fall of Roman Church. Scotland described by foreign visitors.

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Roman religion discontinued by Scottish Parliament in 1560. Nobles assume benefices in commendam. Tulchan bishops. Reformers claim teinds. Annexation Act of 1587. Temporal lordships. Lords of Erection. Total property of Roman Church. Thirds of Benefices. *First Book of Discipline. Second Book of Discipline.* Leasing of teinds. Roman Church in Highlands and Islands. Teind Legislation 1560–1633. Acts for timeous teinding, 1587, 1606, 1612, and 1617. Bishops restored in 1606. Stipend from teind in 1617. Glebe and pasture for minister. Minimum stipend 500 merks or 5 chalders. Revocation of King Charles I in 1625. Alarm of gentry. Deputation to London. Settlement with gentry. Part of teinds claimed by King. King's Annuity. Teinds to be sold by holders to landowners. Ratification by Parliament in 1633. Consolidation of teind rights with land rights.

CHAPTER VII. EFFECTS OF THE POLITICAL DISTURBANCES OF THE SEVENTEENTH CENTURY ON TEINDS . *page* 109.

Amount of teind. King sells Annuity to Earl of Callander. Commissions for Plantation of Kirks and Valuation of Teinds. Commonwealth. Patronage temporarily abolished. Political unsettlement of the century. Bishops and patronage restored in 1660. Leasing of teinds again permitted. Valuation of teinds slow. Locality of teinds. Episcopacy abolished at Revolution. Union of Parliaments. Commissions replaced by Lords of Council and Session. Decisions in teind disputes 1548–1695.

CHAPTER VIII. THE FIXING OF VALUES OF TEINDS IN THE EIGHTEENTH AND NINETEENTH CENTURIES . . *page* 125.

Valuation of teinds progressing in times of peace. Inflation of money. Money Scots disappears. Ministers plead for augmentation of stipend. Augmentation granted in 1790. Duties of heritors as teind-holders, and how performed. Neglect of Church buildings; neglect of poor; feuars share

burdens. Decisions in teind disputes 1734–1821. Teinds as described in *Views of Agriculture* about 1800 throughout Scotland. The *Code of Agriculture*. Tithes a heavy burden upon agriculture in England. Contrast with Scotland by James Anderson in *Essays relating to Agriculture*. Surviving dread of teinds among tenants after valuation.

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Development of Agriculture in Scotland. Teinds when valued a smaller burden on agriculture. Further fall in value of money through war in America and with Napoleon. Legal augmentation of stipend every twenty years (1808). Augmentation in grain. Money stipend converted to grain. Stipend of grain paid in money at fiars prices. Process of Augmentation. Examples. Disappearance of small teinds. State guarantees a minimum stipend of £150 (1810). State gives further aid (1824). Forty-three chapels established by State in Highlands (1824 and 1825). Talk of disestablishment. Disruption. Other sects. Basis and Plan of Union. Church of Scotland Act 1921 for spiritual independence. Teinds Bill 1920. Committee on teinds 1922. Church of Scotland (Property and Endowments) Act, 1925. Full text of clauses relating to teinds. Opposition in House of Lords. Redemption of teinds is rejected by heritors. Land charge. Standardized stipend. Arguments in House of Commons for and against the Act. Quoad sacra parishes. Burgh teinds and burgh churches. Conclusion.

APPENDIX I. Notes on Patronage. . . . . *page* 186.

APPENDIX II. Redemption by State of Exchequer Grants. *page* 188.

BIBLIOGRAPHY . . . . . *page* 189.

INDEX . . . . . *page* 195.

CHAPTER I

# THE ORIGIN OF TEIND SYSTEM

*Primaque ab origine mundi*
*ad mea perpetuum deducite tempora carmen.*

OVID.

IN Scotland the term *teinds* is used in place of the word *tithes*, employed in England. Both signify one-tenth part, and especially the tenth part of all fruits and profits justly acquired, owed to God in recognition of His supreme dominion over man, and to be paid to the ministers of His church.

The writers of the Middle Ages, with their fantastic conceptions of some things, took delight in explaining how the choice of the fraction, one-tenth, was probably due to some mystical significance of the number ten, which contains all the numbers which make up the numerical system; thus the number *ten* represents totality, all kinds of property which is a gift of God. All species of property were consequently reckoned in decades, and a proprietor, by consecrating one of these parts to God, recognized the source of the goods.

'It is said to signifie the first and the last, the beginning and the end; it is *finis simplicium numerorum, initium compositorum*; the end of simple numbers and the beginning of compound; the first articular number, and the last number of single denomination. The number wherewith the progress of numeration, running as it were circularly, always endeth and beginneth again. *Representat* (saith Bartholomeus) *merito ipsum Christum qui est alpha et omega, principium et finis*; that is, it worthily representeth Christ who is alpha and omega, the beginning and the end . . . so the number of 10 comprehendeth all numbers and is itselfe comprehended in none of them, neither is there any number beyond it, but that riseth out of it. *Decas* (saith Saint Ambrose) *numerum omnem complectitur.*' [1]

Nowadays we are content to believe that the tithe system, like the metric system, owes its choice of the fraction, one-

[1] Sir Henry Spelman, *Tithes Too Hot to be Touched*, p. 69, London, 1690.

tenth, to the fact that man has ten fingers upon his two hands.

From our reading of the Bible we are apt to imagine that the custom of paying sacred tithes was peculiar to the Israelites, but this is far from being the case. Amongst all ancient peoples we find not only an established religion with one or more gods, but some regular provision, made out of the land's natural increase, for the Divinity or Divinities, or for his or their representatives on earth, be they kings or priests. The ancients, to whom the forces of nature were a mystery, endeavoured in this way to propitiate the Unseen Powers.

Thus, in Scotland, it was customary to leave to the Devil a piece of land uncultivated, and that too even as late as the seventeenth century.

25th November 1646.[1]

'The said day, compeired William Seifvright and George Stronach, in Glas, and being accused of sorcerie, in alloting and giving over some land to the old goodman (as they call it), denyed the same; and because it vas so alledgit, they promised to manure said land. The brethren, taking the mater to their consideratioun, continowed their censure till the performance of this ther promis.'

Again, if we go as far afield as Ceylon, we find the native king there dedicating a portion of his land for the maintenance of the Buddhist church with its temples, monasteries, and relic chambers.[2] And by the Convention of 1815 these allowances to the Church in Ceylon were continued by the British Crown. Greek literature provides us with definite references to tithes. In the village of Sardis, Croesus made the following suggestion to his conqueror Cyrus:[3] 'Place in front of all doors men of your guard, to remind those who come out laden with treasures of booty, that they ought to consecrate the tenth part to the god Zeus.' Similarly Xeno-

[1] *Presbytery Book of Strathbogie*, p. 71, Spalding Club, 1843. So fairies are called 'our good neighbours'.

[2] Hayley, *Laws and Customs of the Sinhalese*, Colombo, 1923.

[3] Herodotus, Book I, chap. 89.

phon said of Agesilaos: 'He laid waste the land of his enemies so thoroughly that in two years he offered as a tithe to the god of Delphi one hundred talents and more.'[1] When we pass from Greece to Italy, Dionysius of Halicarnassus (*obiit circa* 7 B.C.) relates that the Pelasgians, the oldest people in the Italian peninsula, seeing their crops and cattle perish, made a vow to offer to Jupiter and Apollo the tenth of all that would be given to them in future; they were faithful to their vow, when the plague passed.[2] Cicero, referring to his own period, in his work on *The Nature of the Gods*, mentions the payment of tithes in order to make fun of the abuses that had crept in: 'They promise a tithe, in order to be rich and honoured and safe from harm, but has any one ever been seen to make payment to Hercules, in order to become wiser?'[3] Plutarch, born about A.D. 46, tells us in the same way that many rich people offered to Hercules a tithe of their goods.[4]

But of all the peoples of antiquity the one that gave most importance to tithes, and made tithes really a national institution, was the Jewish people. The Old Testament shows that the tithe was in use among the Hebrews long before the time of Moses. Abraham offered to the high priest Melchizedek the tithe of all his property.[5] Under the Mosaic law the tithe became an institution of positive divine law. It belonged to Jehovah, who gave as a possession to the children of Levi all the tithes of Israel for the service that they rendered him in the ministry of the Tabernacle.[6] For this purpose Jehovah had repeatedly by the mouth of Moses laid regal claim to tithes: 'Thou shalt truly tithe all the increase of thy seed that the field bringeth forth year by

[1] Xenophon, *Hellenics*, Book IV, chap. 3, line 21.

[2] Dionysius, *Archaeologia*, 'antiquitatum Romanarum quae supersunt', p. 17, Lib. I, cap 23, Parisiis, Firmin Didot, 1886.

[3] Cicero, *De Natura Deorum*, Book III, chaps. 87–8: 'neque Herculi quisquam decimam vovit unquam, si sapiens factus esset. At quod dives, quod honoratus, quod incolumis.'

[4] Plutarchus, *Quaestiones Romanae*, chap. 18.

[5] *Genesis*, chap. 14, verse 20.

[6] *Numbers*, chap. 18, verse 21.

year. And thou shalt eat before the Lord thy God, in the place which he shall choose to place his name there, the tithe of thy corn, of thy wine, and of thine oil, and the firstlings of thy herds and of thy flocks; that thou mayest learn to fear the Lord thy God always.'[1] The purpose of the tithe was clearly stated, namely, for the maintenance of priests, orphans, and strangers: 'And the Levite (because he hath no part nor inheritance with thee), and the stranger, and the fatherless, and the widow, which are within thy gates, shall come, and shall eat and be satisfied; that the Lord thy God may bless thee in all the work of thine hand which thou doest.'[2]

The Jews had also a method of commuting the payment in kind to a payment in money: 'And if a man will at all redeem aught of his tithes, he shall add thereto the fifth part thereof.'[3] This reference is of particular interest for the study of tithes in Scotland, because in 1633 Charles the First, in order to put an end to the collecting of teind-sheaves, decreed that one-fifth of the rental should be the equivalent of the old teinds in kind.

This payment of tithes had been at all times observed by the Jews right up to the time of Christ, who rebuked them thus: 'The Scribes and the Pharisees sit in Moses' seat: all therefore whatsoever they bid you observe, that observe and do; but do not ye after their works; for they say, and do not.'[4] Christ did not refuse for Himself and His apostles the offerings of generous souls; the common purse was carried by Judas, who was later to betray him.

Master and disciples agreed, as to a natural right, that the faithful should maintain in material things the priests who supplied them with spiritual food in return. It is clear then, throughout history, that this principle had been applied among the ancient peoples at all times, either under the vague form of voluntary offerings, or in the more regular

[1] *Deuteronomy*, chap. 14, verses 22–3.
[2] Ibid., chap, 14, verse 29.
[3] *Leviticus*, chap. 27, verse 31.
[4] *Matthew*, chap. 23, verses 2-3.

form of contributions called tithes. The apostles, accordingly, continued to accept offerings, of which, however, the largest part went to the indigent members of the Christian Church. These offerings were originally in the Christian Church quite voluntary, as is proved by the incident of Peter and Ananias and Sapphira.[1] Little by little, as the Church grew in size and in organization, these offerings became more regular in amount; they also assumed a compulsory nature, and probably as such were of a smaller amount. It is difficult to say at what time in the Christian era the tithe of the Jews became definitely the standard for contributors to aim at for the maintenance of the Christian Church. But in the third century A.D. Cyprian[2] mentions tithes as an established custom: 'In the church of God it is established that those who are set aside for ordination as priests are at the same time freed from the anxieties and affairs of the world, and receiving from the liberality of their brothers the tithes of their property, they consecrate themselves wholly to the altars and to the sacrifices.' In the same century Origen says:[3] 'In what way am I superior to the Scribes and Pharisees if, when they dared not touch the fruits of the earth before offering the first fruits to the priests, the tithes to the Levites, I deal with my goods in such a way that the priest knows nothing about it, and the altar is no whit the better?' About the year A.D. 400 the *Apostolic Constitutions* made a definite recommendation about tithes:[4] 'You will give to the priests the first fruits of the wine-press and of the threshing floor, of the vine and grain harvests, of oxen and sheep. You will give the tithe of all to the orphan and to the widow, to the poor and to the new converts. You will give also to the priests the first fruits of fresh loaves, of wine in bulk, of oil, of honey, of grapes, and of all the other crops.' About

[1] *Acts*, chap. 5.

[2] Cyprian, *Opera Genuina*, vol. i, ep. 1, par. 2, Goldhorn Lipsiae, 1838.

[3] Origen, *In Numeros Homilia*, XI, vol. x, p. 107, Lommatzsch, Berlin, 1840.

[4] Edition of Bunsen, Longman, London, 1854, vol. ii, p. 351.

the same period (*circa* A.D. 382) St. Jerome,[1] in a letter from Palestine to Pope Damasus (pope, A.D. 366–84), points out that the priests must use the tithes on behalf of strangers and the poor, and give a portion to monasteries and hospitals. There is such insistence on this point that we are tempted thus early to suspect misdirection of tithes from the parish or district of origin to monasteries and cathedrals and hospitals. St. Augustine too, in one of his sermons, complains of the non-payment of tithes:[2] 'Let us give therefore a certain part of our income. But what part? The tenth part. The Scribes and Pharisees gave tithes. Let us blush, brethren. They gave tithes, for whom Christ had not yet poured out His blood. Do not think by any chance that you are doing something remarkable because you break bread to the poor; that is scarcely one thousandth part of your possessions. Unless your righteousness is more abundant than that of the Scribes and of the Pharisees, you shall not enter into the Kingdom of Heaven. The Scribes and the Pharisees gave tithes.' In another sermon, number nine, St. Augustine is not afraid to say that the tithe is claimed by the Church as her due, and that he who refuses to give it is none other than a thief. St. Ambrose (*circa* A.D. 380), in one of his sermons, included in tithes the profit of business and even of the chase.[3] Thus early the Church makes a bid to claim a tithe of all incomes from all sources whatsoever.

It is never difficult for Church or State to make rules or laws; but in a rude, primitive civilization it is very difficult to make the people conform to rules and laws. Human nature is always more disposed to accept than to give; accordingly the early Christian Church through its Councils or General Assemblies, as we would call them, was obliged to

[1] Pithou, *Corpus Juris Canonici*, t. 1, p. 270, Thierry, Paris, 1667.

[2] *Sermon* 85, Benedictine edition, Paris, 1683; also *Sermon* nine.

[3] In sermone quadragesimae super 'Ecce nunc tempus acceptabile', Mediolani C. 380 (Milan): 'aut de grano suo, aut de vino suo, aut de fructibus arborum, aut de pecoribus, aut de horto, aut de negotio, aut de ipsa venatione sua.'

issue formal decrees not once but repeatedly during the Dark Ages, in order to try to enforce the payment of tithes. The reports of these Councils have been collected chronologically in a monumental work by an Italian, Mansi.[1] And so we find that in 585 the Council of Mâcon decided to excommunicate all Christians who declined to pay to the Church a tithe of their income.[2] To quote the decree: 'Priests will use the tithes for the poor, for the ransom of captives, and to obtain by their prayers peace and salvation for the people; but if any one still refuses obstinately to conform to our decrees let him be for ever separated from the members of the Church.' However, the Church seemed powerless to enforce obedience, for the same decree is repeated in the Councils of 791, 813, 835, 847, 852, 857, 888, 895, 1118, and 1209.[3] We find this exhortation to the faithful to pay their tithes constantly repeated, in order to appease the anger of God, which was manifested in the awful calamities of civil war. Gregory of Tours (538–94) relates that a recluse in Nice, named Hospitius, a man of great austerity, foretold to his contemporaries the incursions of the Lombards, because the people, unfaithful to God, prone to perjury and thieving, had ceased to pay tithes.[4]

In the early Christian centuries the tithes were spent upon three objects, namely, the maintenance of the local priest, the upkeep of the church fabric, and the relief of the poor. So far the Bishop had no share in the tithes.

Despite these repeated fulminations of the Church against those who were not paying their tithes, the tithe continued to remain in some measure unpaid or misappropriated. Accordingly the Church invoked the help of the State with its civil power in the collecting of tithes. In the Middle Ages the co-operation of Church and State is a characteristic

[1] Mansi, *Sacrorum conciliorum nova et amplissima collectio*, Leipzig, 1903 onwards to 1927.
[2] Ibid., anno 585, vol. ix, col. 951.
[3] Mansi, under years specified.
[4] Gregorius, *Histoire Ecclésiastique des Francs*, Book VI, chap. 6. Edition by Taranne, Renouard, Paris, 1837.

feature in all the countries of Europe. In 764 Pepin the Short, King of the Franks, and a zealous upholder of Christianity, wrote to the Bishop of Mayence offering his help in the collecting of tithes:

'Pepin, by the grace of God, King of the Franks, a noble man, to my Lord and Holy Father Lullus, Bishop of Mayence.[1] Your Holiness is well aware how the pity of God has favoured this year in His land. He sent us tribulation for our sins, but after the tribulation there has come a great and wonderful consolation, which is the present abundance of the fruits of the earth. For this cause and for others, we need to give thanks, in that God has deigned to console His servants by His pity. It seems right then that each priest in his district should hold solemn service without fasting, to praise God who has given such an abundance of good things. Let each man likewise give alms and feed the poor. *See also and order it in my name, that each man pay his tithe, whether he will or no.*'

True, there is an earlier reference in Baluzius to the year 743, when Carloman, son of Charles Martel, by his presence at a meeting of Bishops at Leptines near Cambrai, gave royal authority for the payment of tithes. 'We issue this warning and instruction that there be given to God without fail, of all things a tenth, which God Himself has decreed should be given; because there is reason to dread that, whoever withholds his due from God, the same through his sin, may have what is necessary taken away from him, and the nine parts may be taken away from him who shall have neglected to pay the tenth to God.' Although this Carloman turned monk, yet in this admonition of his we can hardly read a royal decree with civil power behind it to enforce obedience. On the other hand, Pepin authorized the Bishop of Mayence to use the royal name in order to exact tithes, and Pepin's son, Charlemagne, made the payment of tithes definitely compulsory in Civil Law in A.D. 779. 'With regard to tithes, let each pay his tithe, and let the tithe be divided in accordance

[1] E. Baluzius, *Capitularia*, 'Pippini regis constitutio generalis de litaniis faciendis pro ubertate terrae', t. 1, coll, 185–6.

with the instruction of the Pope.[1] The laws in the early history of all countries had to be re-enacted at intervals, and so we find in 789: 'In accordance with the will of God, we decree that all give unto their churches and their priests the tenth part of their substance and their labours, nobles as well as freemen, and half serfs (*liti*); as God shall have given to each Christian, so let all return to him a share.'[2] This royal decree for the payment of tithes in France was repeated in 802, 803, 804, 805, 813, 829, 857, 865. It is safe to conclude that the local government was incapable of enforcing the observance of a royal decree in the midst of a rudimentary civilization dominated by the local noblemen.

When Charlemagne subdued Saxony, in order to consolidate his conquest he founded numerous churches in that heathen land, and to these churches he granted tithes as in France. 'Let all the faithful know that the Saxons, always indomitable and so long rebellious against God himself and against us, have at last been subdued by the power of God and not by us. Let all the inhabitants, rich and poor, pay regularly to Our Lord and Saviour Jesus Christ, as well as to His priests, the tithes of all their cattle, of all their fruits, and of all their crops.'[3] This king showed the example by paying tithes of all his royal revenues—an example which was later to be followed by the early kings of Scotland. There is no evidence to prove that these Anglo-Saxons, who about this period migrated to the east coast of Britain, took with them from the Continent the habit of paying tithes. Charlemagne, at the same time as he championed and established the Christian Church in France, ordered the destruction of all the remains of the primitive Celtic religion—dolmens, menhirs, stone circles—in order to stamp out the persisting pagan customs and superstitions.

[1] E. Baluzius, *Capitularia*, t. 1, col. 196: 'De decimis, ut unusquisque suam decimam donet, atque per iussionem Pontificis dispensetur.'

[2] Ibid., t. 1, col. 253.

[3] Ibid., t. 1, col. 245, A.D. 789. 'Praeceptum de institutione episcopatuum per Saxoniam.'

Scarcely had Charlemagne made the payment of tithes compulsory than he was obliged to issue additional decrees against the misuse of tithes by the clergy and others. This is the beginning of centuries of evil in the administration of tithes throughout Europe.

We noted that, in A.D. 779, Charlemagne allowed the bishop a hand in the administration of tithes. Curiously, his capitulary in A.D. 801 on this point omits the bishop entirely:

'Let the priests themselves gather the tithes of the people, and have the names of those who have paid written down, and let them divide the tithes in the presence of witnesses according to the canons; and let them first set aside one part for the adorning of the church, a second for the use of the poor and of strangers to be dispensed by their own hands with all humility and pity, and let the priests reserve for themselves the third part.' [1]

Is the king repelling the inroads of the bishops upon the Church revenues? If he is trying to do this, then he fails signally, for in the same year he issued another capitulary 'that the tithes of the people be divided into four parts, that the first part be given to the bishops, the second to the priests, the third to the poor, and the fourth for the fabric of the church itself'. [2] This decree was repeated at short intervals in A.D. 805,[3] and in A.D. 813, 829, 847, 893, 895, and became the regular formula throughout Western Europe. The Council of 895 [4] strengthens its decree by quoting the advice of St. Augustine upon the payment of tithes:

'Tithes are demanded as a due. What would God say in the matter? "Forsooth! Thou art mine, O Man! Mine is the earth which thou art cultivating. Mine are the seeds which thou art sowing. Mine are the animals which thou makest tired. Mine is the heat of the sun, and since all things are mine, give unto me a tenth part, and I give thee nine parts. If thou failest to give me the tenth, I shall take away the nine. If thou givest me the tenth, I shall multiply the nine; and if any one ask why tithes are given, let him know that they are to be given in order that God may be pleased with this devotion, and may give more boun-

[1] Baluzius, t. 1, col. 359. [2] Ibid., t. 1. col. 356. [3] Ibid., t. 1. col. 428.
[4] Mansi, *Concilium Triburiense*, anno 895, vol. xviii A, col. 139.

tifully those things that are necessary, and in order that the servants of the Church may thereby be relieved and the more free to give themselves to the duty of spiritual service, and the relief of the poor, and the restoration of the church, in accordance with the statutes."'

One capitulary of this period lays down the royal instructions in detail thus:

'The priests are to be instructed and likewise warned, so that they may know that the tithes and offerings which they receive from the faithful are for the maintenance of the poor and travellers and strangers, and that they should use them not as their own, but as a trust; let them know that they will have to give an account of them all in the presence of the Divine Majesty, and unless they have administered them faithfully to the poor and to those for whom they are intended, they will suffer condemnation. The sacred canons give instructions how tithes are to be spent, namely, that all are to be divided into four parts, one for the upkeep of the fabric of the church, the second to be distributed to the poor, the third to be held on behalf of the priest and his assistant clerics, and the fourth reserved for the bishops. And whatever the Pope shall command after that, let it be done with his wise counsel.' [1]

Later on, the strong hand of the bishops gradually drew away the tithes from their spiritual and social purposes in their parish of origin, for the upkeep of huge cathedrals, chapters, and monasteries—the beginning of the misdirection of tithes.

Other capitularies reveal additional latent evils in the administration of tithes. The sale of tithes is forbidden absolutely, except that the Church, in times of great stress, may, with the permission of the bishop, sell tithes and the right to impose tithes to laymen; for example, in order to restore churches, to redeem captives, or to finance a crusade.[2] Alas, tithes became the common stocks and shares of the Middle Ages!

Numerous capitularies reveal how the poor lost their liberty, their property, their right to justice, and their share

[1] Baluzius, t. 1, col. 1104. [2] Ibid., t. 1, col. 1070, 1212, 1224.

of the tithes. In A.D. 814 Charlemagne decreed *Ecclesia pauperes pascere debet*—the Church ought to feed the poor.[1] Later on, this neglect of the poor was destined in Scotland to lead to the publication of the famous *Beggars' Summons* of 1 January 1559, which called upon all monks to quit their monasteries and possessions and make way for the poor.

The reign of Charlemagne in France was marked by great progress in civilization and by the increase of power to the Church of Rome. And so we find tithing more fully developed in France, and better recorded than in Britain. The whole system of tithing came to Britain from the Continent, and so it has been necessary to examine decrees of Church and State in France as a necessary preliminary study.

As the Church spread from the Continent through the various kingdoms in England up to the time of the Norman Conquest, Church observances and Church dues doubtless were recognized as of canonical authority; custom in certain early states of society easily passes into law; and the line of separation between civil and ecclesiastical legislation was not then clearly drawn.

A royal injunction for the payment of tithes, although not made or confirmed in the manner necessary to give it the force of national law, was a step of great importance in that direction. That step was taken by King Athelstan, grandson of Alfred the Great, about A.D. 927, who had made himself practically King of all England. This royal order was issued upon the advice of the King's archbishop and bishop, and communicated as a royal message to bishops, thanes, counts, and villeins in Kent.[2] Its great importance to us is that its manner and wording were imitated in Scotland by the early Scottish kings, when they had spread their rule over all the land. Athelstan ordered his reeves (sheriffs in Scotland) first to pay a tithe of all the royal income, fruits, and live stock; bishops, ealdormen, and reeves to do the same, &c. In the

[1] Baluzius, t. 1, col. 524.

[2] Earl of Selborne, *Ancient Facts and Fictions concerning Churches and Tithes*, p. 183, London, 1888.

same way the Scottish kings first gave a tithe of their own income, by way of example to all their subjects. Later, the following kings made the payment of tithes compulsory by civil law:[1] Edmond in 944, Edgar in 967, and Ethelred in 1012. King Edgar also decreed that these dues to God were to be paid at definite dates, namely, tithes of seed within fifteen days of Easter; tithes of animals before Pentecost, tithes of crops before the festival of All Saints (1 November), and St. Peter's Pence before the festival of Peter in Chains. There was a regular court procedure for dealing with those who failed to pay. William the Conqueror, likewise in turn, gave his royal support to the Church in the collecting of tithes:

'Of all grains the tenth sheaf is due to God, therefore let it be rendered. And whosoever has a herd of mares, shall render the tenth colt, and if he have only one mare or two, he shall pay for each colt's share one penny. In like manner, whosoever has several kine shall render the tenth calf, and if he have one or two only, he shall pay for each calf one penny. And whosoever makes cheese shall give the tenth cheese to God, and if he does not make cheese, he shall give the tenth day's milk. In like manner every one shall give the tenth lamb, the tenth fleece, the tenth part of the butter, and the tenth young pig. In like manner of bees, the tenth part of the increase, also of woods, of meadows, of waters, of mills, of parks, of ponds, of fisheries, of orchards, of gardens, of the profits of trade, and of everything which the Lord has given, the tenth part shall be restored unto Him, by Whom the nine parts as well as the tenth have been bountifully bestowed.'

Hart, in his examinations of the records of the Church Councils in Britain, has little to say of Scotland, except that before the time of Malcolm the Third the land was not yet divided into dioceses, but that any bishop performed episcopal duties who happened by any chance to be in any locality. We agree with Hume Brown and Dowden that,

[1] R. Hart, *Medulla Conciliorum Magnae Britanniae*, London, 1833, p. 12 et seq.

with regard to tithes at any rate, the work of the early Scottish kings, and notably of King David, for the Church, was purely imitative, and can be compared closely with the work of Church development in other parts of Western Christendom.

At this point we can summarize the theory of tithes, as it existed when the Roman Church began to spread over Scotland. The payment of tithes was considered an act of justice towards the servants of the Church, who, like all workmen, were worthy of their hire. It is important to note that this payment was an act of religion. God, having given everything, ought to receive His share of everything. To refuse Him the tithe of any income was implicitly to refuse to recognize that He was the Author and Master of all things. In principle, therefore, the tithe was leviable upon all the products of fields and gardens, grains, vegetables, fruits, upon the produce of animals, calves, colts, lambs, piglings, wool, honey, &c., upon the profits of fishings and mills, upon the profits of industry and commerce, upon hunting, and even upon the profits of the military profession in the Middle Ages.

Various popes, notably Alexander the Third, at the Council 'Cassiliense' in A.D. 1172, laid down lists in great detail of things tithable.[1] But in point of fact, throughout Europe, the tithe upon the profits of industry and commerce, upon war and the chase, disappeared early, in view of the difficulty and impossibility of assessing and collecting tithes upon these profits or benefits. As a rule the tithe remained a tax—only upon the produce of the land and upon some fishings. This due was payable by those who reaped the crops, and who, living on the spot, required the services of the Church and of the priest. By common law, the tithes of all the fruits of the parish belonged to the priest. This was expressed by the Latin formula, *Decimae debentur parocho*, meaning 'the tithes are due or belong to the parish priest'. The formula in French

[1] Mansi, A.D. 1172, vol. xxii, col. 134.

was 'Le clocher fait la dîme', meaning 'The church belfry has the right to the tithes'. It was the harvest that owed the tithes, and not the land that produced the harvest. Tithes are a *debitum fructuum*, not a *debitum fundi*. Therefore it was the harvester or farmer who was liable for the payment of the tithes, and not the proprietor, who, by the way, likewise took away a share of the harvest as his rent or civil fruits.

When the French settled in Canada they took with them the tithe as an obligation of common law, and they made an interesting return to this primitive, theoretical law of tithing, whereby the tithe was made payable to the priest who laboured in each parish, and not to a dignitary of the Church outside the parish, as unfortunately happened regularly throughout Europe during the Middle Ages.[1]

We shall now proceed to examine the institution of tithes or *teinds* in Scotland.

[1] *Revue trimestrielle canadienne*, mars, 1925, *La dîme dans la province de Québec*, par Paul Lawie.

CHAPTER II

# INTRODUCTION OF TEIND SYSTEM TO SCOTLAND

IT is not until the eleventh century that we begin to find written records in Scotland in any quantity. That is the reason why it was necessary first to trace the history of tithes on the Continent. Why should we find earlier records of tithes in France? Because France reached this stage of Christian civilization at an early date. Sooner than other countries, she outgrew that vague and rudimentary state in which the geographical aptitudes and resources of a country are still latent. Through France lay the route from the Mediterranean to the North Sea, and the communication over her land hastened the unification of the whole and the growth of a national personality.

In the year 1070 Malcolm the Third (Canmore) married the Saxon princess Margaret, and Queen Margaret brought and introduced into Scotland the highly organized Roman Catholic Church, with its tithe system already fully developed. As proof that the Scottish teind system was the same as the English and Continental tithing, we find the very same expressions in Latin used to describe this international Church organization. Slight differences will develop later.

Unfortunately, two disasters overtook teind records in Scotland, and made a naturally confused subject worse confounded. In 1650 Cromwell ordered the removal of all Scottish records to London. These records were lost by shipwreck whilst being transported back to Scotland at the Restoration in 1660. Further teind records were lost in the fire of 1700 in Parliament Close, Edinburgh, in which probably two-thirds of the transactions of the Church Assemblies from 1560 to 1616 were lost for ever.[1] In 1707 an effort was made

[1] Estimate of Rev. Thomas Leishman, D.D., in *Church of Scotland Past and Present*, vol. v, p. 307. 85 hogsheads of records were lost in the wreck.

to collect documents from authentic extracts previously issued.[1]

'And for supplying the lost registers of that court, Her Majesty and the said Estates do hereby appoint and ordain that any authentick extracts from the said records be brought in, and being presented to the said lords [i.e. of Council and Session], be recorded in a particular register, and that the said extracts so brought in be kept by the Lord Clerk Register and his Depute Clerks to be appointed by him for that effect . . . and there shall be given a new extract gratis to every person that shall give in an old extract, &c.'

Five volumes of teind records were made up in this way.

Before Christianity filtered through to the tribes of Scotland by the efforts of St. Columba and other early missionaries, the Celtic inhabitants had a religion of their own. We have no written records or definite information regarding this religion, but we find all over Scotland prehistoric monuments—menhirs, dolmens, circles, all in stone—which are generally associated with the pre-Christian form of worship. We found in the previous chapter that Charlemagne ordered these Celtic monuments in France to be destroyed in order to combat superstitions and persisting pagan customs. But even to the present day, in Brittany as in Scotland, there is a veneration for these relics of the old Celtic religion. Many Celtic stones in Brittany are now crowned with Christian crosses, so that one religion is merged in another. At Quiberon, Morbihan, the central pillar of the 1914-18 War Memorial consists of a huge menhir, twenty-five feet high, unearthed in a field nearby. In the same way the tomb of Zénaïde Fleuriot (1829-1890), a French writer, at Locmariaquer, Morbihan, is a menhir decorated with a crucifix. Similarly in Scotland, during the Middle Ages, the same reverence was shown for these prehistoric Celtic monuments. In the thirteenth century a baron held his court at the Standing Stones of Easter Kingussie (in the midst of his

[1] *Acts of the Parliament of Scotland*, vol. i, p. 433.

vassals or clansmen).[1] So long as agriculture was in its infancy, and there was little disposition to cultivate any land except that which was of fair quality or free from obstacles, these standing stones were not interfered with. It was considered uncanny to meddle with these aged, mysterious stones, set upright in regular formation:

Meddle nae in holy things,
For gin ye dee
A weird, I rede, in some shape,
Shall follow thee.

But after the Jacobite Rebellions, when land began to increase in value, with improved methods in agriculture, and with the introduction of new crops and manures, very many of these sacred monuments were ruthlessly swept away.[2]

In the scanty records of the Celtic Christian Church contained in the *Book of Deer* there is no mention whatsoever of the payment of teinds.[3] Lands were gifted to the monastery by the local chiefs, free of all taxation unto the Day of Judgement. From this centre of Deer, in Aberdeenshire, clerics wandered amongst the tribes to teach them Christianity.

It was the Roman Church that brought through England from the Continent a system of parishes, which had to be grafted on to the existing clan system. The old Celtic or Culdee monastery, well endowed by its Church members with tributes and lands, was the Church centre of a clan which had no fixed limits of territory, and whose lands changed frequently after feuds and fighting. Parishes, on the contrary, were formed with definite boundaries. Yet King David the First confirmed by charter to the Culdee monks of Deer all their lands, to be held free from interference by laymen, and free from all undue exaction, as was written in their Book, and as they pleaded at Banff and stated on oath at Aberdeen. In the early charter of the Episcopal Church at Mortlach (afterwards removed to Old Aberdeen) there is no mention of teinds.

[1] *Registrum Episcopatus Moraviensis*, p. 183, Bannatyne Club, 1837.
[2] *Proceedings of the Society of Antiquaries*, 8 June, 1885, p. 370.
[3] *Book of Deer*, edited by John Stuart, Spalding Club, 1869.

In this case such charters may possibly have been drafted upon the Celtic model, viz., a simple statement of a grant of land to a church, to prove, in new feudal fashion, the right of the church to that land. Here is the charter of Mortlach, dated 1062:[1]

'Malcolm, King of the Scots, to all his honourable men, both cleric and lay, greeting. May ye know that I have given, and by this charter, have confirmed to God and the Blessed Mary and all the Saints, and to Bishop Beyn, of Mortlach, the church of Mortlach, that it be made an Episcopal See with my lands of Mortlach, the church of Cloveth with its land, the church of Dulmach with its land, to be held freely as I have held them, and in pure and perpetual alms, I myself being witness at Forfar on the eighth day of the month of October in the sixth year of my reign.'

Parishes appear in Scotland early in the twelfth century, and the classic example of Ednam is the first recorded parish.[2] King Edgar (1097-1107) bestowed upon an incoming Saxon of the name of Thor, the Long, a stretch of waste land near Kelso, which was destined to be the parish of Ednam. Thor cleared the land for cultivation, built a church in honour of St. Cuthbert, which he endowed with a ploughgate of land, and entrusted to the monks of Durham. Thus Thor was the patron of the Church of Ednam, and here we see the origin of patronage in the Church of Scotland. The legal formula in Latin was *Dos, aedificatio, fundus faciunt patronum*,[3] meaning 'the endowing, building and founding of a church make the patron'. In these early days a measure of land (the amount that one plough could cultivate, with one team of oxen, eight, ten or twelve, about one hundred and four

[1] *Registrum Episcopatus Aberdonensis*, p. 3, Spalding Club, 1845.

[2] *Registrum de Kelso*, p. 5, Bannatyne Club, 1846.

[3] *Dos* means the giving of stipend, *aedificatio* the building of the church, and *fundus* the giving of ground necessary for church, churchyard, manse, and glebe. Patronage was at first a voluntary agreement. Then the patron claimed the right to present to the bishop for approval a priest to his church. If the presentee were not approved by the church rulers the patron drew the stipend during the vacancy. The patron saw that the priest did not alienate the revenue of the church by granting tacks of teinds, &c. Patronage was finally abolished in 1874. See Appendix 1.

acres Scots) was given to the Church, and this piece of land guaranteed to the priest a minimum living from the produce of the soil. In modern times the counterpart of this grant of land is the minister's glebe. In Aberdeen and Moray the land given to a church is estimated as a half-davach, which is said to have equalled two ploughgates.[1] Parishes then were an outcome of the Anglo-Norman invasion and influence in Scotland in the twelfth century. So far, however, there is no mention of teinds. But King William the Lion (1165-1214) enacted that priests should live respectably off the fruits, rents, and emoluments of their churches, and should be neither husbandmen, nor shepherds, nor merchants.[2] It was the same William the Lion who enforced by Civil Law the payment of teinds, so that each priest in his parish might be suitably provided for. This is the first legal mention of teinds in Scotland in the Acts of the Parliament of Scotland.[3] William issued instructions to all his sheriffs and officials to see that teinds were paid to the Canons of St. Andrews, as was ordained in the time of King David:

'That you cause their teinds and all dues belonging to the Catholic Church to be paid by their parishioners, and that their parishes be maintained as they were in the time of my brother King Malcolm, as correctly and as well. But if they are unwilling to pay, I order you to compel them to pay, and that you inflict a full fine upon them, as was ordained by my ancestor King David in Scotland.'

Kings prior to William had shown an excellent example to their subjects by themselves paying teinds regularly upon their whole income. King Alexander the First (1106-1124) granted to the chapel in the castle of Stirling the teind of his lordship of the Sock of Stirling.[4] His successor, King David the First (1124-1153), in addition to making handsome grants of lands to many monasteries throughout the land, made grants of teinds of his own varied revenues. This was

[1] *Reg. Epis. Morav.*, p. 2.
[2] *A.P.S.* (*Acts of the Parliament of Scotland*), vol. i, p. 60.
[3] Ibid., p. 90.
[4] Ibid., p. 47.

the king who, through his generosity to the Church, was called the 'sair sanct', in that he gave away to the Church an enormous share of the property of the realm. In the appendix of the first volume of the Acts of Scotland we find a long list of the various grants of teinds made by this King; for example, of his game, of his salt and iron, of his seals, of all his rents in malt or gold, of his corn, cattle, fish, mills, wild mares, money rents, lordships, fines, issues of courts, whales, and porpoises.[1] We note that these grants were made to the various abbeys rather than to the parish clergy. In fact this King seems to have been in the hands of the higher clergy of the day. Nevertheless, in the case of teinds, he showed a good example, and ordained the payment which William the Lion enforced by full civil enactment. It is certain that the Church in David's day was monastic rather than parochial in organization, after the Celtic pattern, and that individual parishes and parish churches were established only by degrees. Naturally the Roman Catholic religion would be practised first among the wealthy Anglo-Norman nobles, who had imported it with them. Only later would the lower classes be taught the precepts of religion by the parish priest. Hence it was that very early in the history of Scotland the wealth of the Church was directed to the high clergy and the monasteries.

Here is the translation of King William's law enforcing the payment of teinds in Moray, that outlying and rebellious portion of his kingdom.[2] We note the resemblance in substance and form to the law of tithing of King Athelstan in England about 927 A.D.:

'William, by the grace of God, to all his honourable and faithful men in Moray, greeting. I instruct you and firmly command that you pay, without any way of declining, to God and to your churches, and to the rectors and priests of your churches, all church dues and all your teinds of grain, wool, linen, hens, calves, piglings, lambs, butter, cheese, fishings, and of all other things which, by the grace of God operating, shall have been renewed to you during the year, and of all other things, of which the Holy

[1] *A.P.S.*, vol. i, p. 357. [2] Ibid., p. 90.

Church demands teinds to be paid. Also I firmly forbid any one to withhold unjustly his teinds or other church dues at the risk of the heaviest penalties of my courts. But if any one presumes to withhold teinds or church dues, I order him to be compelled to pay his teinds or that church due, along with his penalty, according to the law of King David, my ancestor, and as the custom was in his time, and as the custom now is in the diocese of St. Andrews, namely, that, if it is a villein [*villanus*] who declines to pay his teind or church due, the thane [*theynus*], under whom that peasant [*rusticus*] lives, or his master [*dominus*], if he has a master, should compel him to pay that teind and that church due, and should take from him as a penalty one cow and one ewe. But if the thane, under whom that peasant is, or his master, if he has a master, does not compel him to do this, or if the thane himself withholds his own teind or other church due, then the sheriff [*vicecomes*] in whose sheriffdom [*balliva*] he is, must compel the withholder to pay his teind or other due to the church, and the dispenser of the law of King David and of my statute, whether he be a thane or the master of a peasant, to pay his fine to me, namely, eight cows. But if the sheriff is a careless executor of this mandate, or presumes to withhold his own teind or other church due, let my Justice compel the withholder, whoever he is, to pay to the church his teind or other church due, and compel the transgressor of the law of King David and of my statute, whoever he is, whether sheriff or thane or master of a peasant, to pay his fine to me, namely, eight cows. So that we, who ought to be sons of Holy Mother Church, may preserve her rights intact to her in holy love and fear, so that whoever are rebellious to her may not go unpunished, nor by their own perversity and obstinacy diminish or abolish the rights and dues of Holy Mother Church. Witnesses, Matthew Bishop of Aberdeen, John Bishop of Caithness, Robert and William my chaplains, Hugo my clerk, Patrick a knight, Gilbert a knight, William son of Freskin, William of Lindesey, Robert of Loudon, William of Hay, Ranulf of Soulis, Peter of Polloc, Philip a marshal, and Hervey a marshal, at Elgin.'

We realize from this that the good example of King David in the payment of teinds was not being faithfully followed by all subjects in the realm, and that King William was doing his utmost to enforce payments in all parts of Scotland subject to his jurisdiction and control, even in this rebellious

and distant province of Moray. This Act reveals also the existence of a feudal society, with its various ranks or classes. The first witnesses of the Act are powerful Churchmen, who doubtless are securing in writing for the Church all grants, teinds, and dues, in regular feudal style. Most of the witnesses have no surnames, and many years will have to elapse before Scotsmen of all classes acquire a surname. Some of the landowners will take the name of their land, and many of the lower classes will take their names from their occupations, e.g. smith, goadsman, clerk, fisher, seller, mercer, &c. Some years later William repeated his instructions to Moray in even sterner language, and detailing all produce liable to teind, 'that in this way we who ought to be the sons of Holy Mother Church, may preserve to her with divine love and fear all her rights intact and undiminished, so that those who are rebels to her may not go unpunished, nor through wickedness and obstinacy diminish or carry off the dues and payments of Holy Mother Church'.[1] Obviously the local government had failed to carry out the King's orders, which had been included in a previous charter to Elgin Cathedral, *sicut carta mea quam habent testatur*. King William too, by way of example, granted to the Church a teind of his own income, 'for the souls of my ancestors and for the safety of my own soul, my teind of my revenues in Moray, and of my fines throughout the whole bishopric of Moray; of my revenues, namely, of my "can", of my cows and pigs, of grain and beer, of fodder, of cheese and butter, except what my predecessors granted and assigned to other churches'.[2] The priest of a parish was called the rector or parson, when he enjoyed all the original endowments, teinds and other dues payable to his parish. He was the spiritual ruler of the parish church and of the people resident in his parish. The founder or patron of the church had the right of presenting a priest with the church and its emoluments. This priest required to have his presentation approved by the Bishop

[1] *Reg. Epis. Morav.*, p. 5. [2] Ibid., p. 4.

of the Diocese, who authorized the presentation and the delivery of the Bible and the keys of the church. When a priest died a steward or 'commendator' was appointed to manage the revenues of the church during the vacancy. If the patron was a layman he held the church for four months *in commendam*. The revenues of the parish consisted of two parts, first, the Temporality, or income from lands or endowments, and secondly, the Spirituality, or income derived from teinds. The patron or founder made over his rights to a monastery or a cathedral, to the monks or canons, *in proprios usus*, that is, the whole revenues were conveyed by deed to the corporation on the condition that the monks or canons provided for the spiritual ministrations of the parish. The temptation was for the cathedrals and monasteries to retain for themselves the bulk of the revenues of the parish, while supplying a very inferior clergyman for the service of the parish at as cheap a rate as possible. A monk might be sent to serve in a parish if it were not too far distant, and this deputy was styled a vicar. The Abbot or Bishop appointed the vicar, gave him frequently the smaller teinds, which were called the Vicarage teinds, whilst he retained for the Abbey or Cathedral the larger teinds of the grain crops, which were called the Parsonage teinds. It sometimes happened that the vicar was granted merely what was called a suitable portion or pension, and this became very common later with the plurality of benefices. Commendators, too, abused their powers, feuing the lands of the parish for a small feu-duty and a large grassum.[1] In Scotland the piety of kings and nobles took shape chiefly in the founding of monasteries, and so, early in the Scottish Medieval Church, many parishes were bestowed on monasteries. It has been estimated by many authorities that at the Reformation the revenues of approximately two-thirds of the parishes in Scotland were being diverted from the uses of the parish

[1] A grassum is a lump sum paid by a person taking a lease of land, with the annual rent correspondingly lower.

church to the uses of the monasteries, cathedrals or laymen. This was not peculiar to Scotland, for various popes tried to check it all over Europe. Various Scottish Synods tried to ensure a sufficient income to the poor vicars. Even in the case when a rector was drawing all the revenues of his church he had to pay to the Bishop, his superior, certain dues; he had to entertain him and his court of as many as thirty to a hundred horsemen when the Bishop visited his parish churches. This entertainment, called 'procurations', was later changed to a money payment. The chartulary of Lindores [1] records the amount payable by certain parishes in Aberdeenshire to the Abbey, as, for Premnay, £10 13*s.* 8*d.*, Insch, £14 13*s.* 4*d.*, Culsalmond, £17 13*s.* 4*d.*, whilst the poor vicar in each case was paid £2 13*s.* 4*d.*, £4, and £4. In the rent roll of Coupar Angus [2] the parish of Alvah in Banffshire was let by the Abbey of Coupar in 1542 for 19 years to Sir Walter Ogilvy and to his spouse Dame Alison Hume, teinds, fruits, rents, offerings, for £74, plus the burdens of £10 a year, with manse and glebe to the vicar, ten merks to Aberdeen Cathedral, *and the usual Bishop's dues.* This leasing of churches appears early. Various statutes tried to stop it, but in vain. It was a handy arrangement for a monastery or a cathedral to let to a tacksman the teinds of a parish that was far remote. But the real evil was the diverting of the money from the use of the parish. The parish church, although provided for in the earliest continental laws on teinds, had in Scotland to be built and kept in repair by the parishioners [3]. The chancel had to be built and kept by the rector whilst the manse was built and maintained by the rector or vicar in proportion to their drawings or in accordance with any private arrangement. Bishops and abbots took good care that all lands held by them were held

[1] *Chart. Lindores,* xlvii–xlix, Scottish History Society, Edinburgh, 1903.

[2] *Rental Book of Coupar Angus,* vol. ii, pp. 26–7, Grampian Club, London, 1879.

[3] *S.E.S.*, vol. ii, p. 11 (*Statuta Ecclesiae Scoticanae*), Bannatyne Club, Edinburgh, 1866.

in the very best form of tenure, namely, in 'Frankalmoign', that is, free of all feudal dues and services, or in Latin, *in liberam, puram, et perpetuam eleemosynam.*

Thus it is that Erskine,[1] the authority on Scots Law, states very plainly that, although teinds ought to be payable in kind to the parish priest, this rule never obtained universally at any period of time, and the Latin formula was never enforced, *Decimarum perceptio ad solos parochos de iure communi pertinet.* The parish priest lost his rights through misdirection of teinds by patrons to a Cathedral Church or monastery when a vacancy occurred, or by papal exemptions, or by infeudation of teinds to laymen. Still, throughout the Middle Ages, the parish priests, *qua* parsons, regarded the teinds as their peculiar patrimony, both before the Reformation and after it. For the Act 1567, concerning the revenues of the Church, stated: 'The ministers hes bene lang defrauded of their stipendis.' This law ordered the payment of 'the haill thrids of the haill benefices of this realme. . . Ay and quhill the kirk come to the full possessioun of their proper patrimonie quhilk is the teindes'.

The Church Councils on the Continent as well as in Scotland agreed that all classes were teindable—proprietors or their farmers, Jews, heretics, nobles, freemen, clerics and laymen, all and sundry, whether they accepted the services of the Church or not. In France during the seventeenth century Protestants and Jews were compelled to pay. In Scotland in the thirteenth century the Church tried to compel artisans to pay, and the profits of the mechanical arts were to be obtained on oath after deduction of necessary expenses.[2] It is impossible to say how long, if ever, such teinds were paid upon personal labour. Poor labourers earning half a merk or less were ordered by the Church statute in the thirteenth century to pay three *oblations*, or offerings, whatever these may have been.[3]

Although from the very beginning in Scotland difficulties

[1] *Institutes*, vol. ii, pp. 10–11. [2] *S.E.S.*, vol. ii, p. 44. [3] Ibid., p. 23.

arose over teinds, still for the state of civilization of the time something good can be said for teinds. The Roman Church did mean for Scotland a big advance in civilization. A teind for the parish priest meant for him a direct means of existence. The priest could not get food from elsewhere, for transport was rudimentary and roads non-existent. At that time each parish grew all its own foodstuffs for the year. Very little of it was sold within the country, and less of it outwith the country. No money was in circulation in rural districts, for money was used only for external trade with the Continent. In fact the coin known as 'the sterling' came to us from the Baltic, and seems to have been the best of many currencies circulating on the Continent. The crops were few in number and easily teinded. Each peasant was a Christian and was fond of his priest, and readily gave a share of his crop at harvest time as a thank-offering. On the other hand, if misfortune were to overtake him the peasant knew that he could count upon the helping hand of the charitable priest.

There is a certain rough justice in the teind as being a proportion of the crop. All peasants in their quiet, rural life are victims of habit. They would never give the question of teinds, or any other question, serious thought. The peasant simply at harvest time paid on the spot, and in return he had a priest, a church, and a system of poor relief. The payment of teinds was often made an occasion for banqueting; it was an opportunity for all the parishioners to gather round the church, and the priest usually entertained them when they brought their teinds to his granary. In fact, some peasants used to make several journeys to the priest with their teinds when one would have sufficed. The Council of Tarragona [1] in 1329 had to prohibit this with a threat of excommunication for the peasants who came expecting to be entertained (*cum decimas ad granarium ecclesiae deferunt, sicut debent, comestiones ceu prandia exigunt*). If the teinds had remained for

[1] Mansi, A.D. 1329, vol. xxv, col. 856.

the purposes for which they were originally destined by the early Church Councils there would have been no complaints, and abuses would not have crept in, for real teinding within a parish was a useful social institution.

The monasteries of the Roman Church that were being founded all over Scotland at this time brought with them and demonstrated a new civilization. They were given large tracts of land, and they performed in an excellent fashion their duties as good neighbours and good landlords. The monks were better farmers and better gardeners than the nobles, who did nothing but draw in as rent their share of the fruits of the soil. They were charitable and hospitable in the midst of warlike laymen ; they were peace-loving, and brought a civilizing influence among the barbarous natives. They instituted schools; they taught craftsmanship and moral discipline. From the Continent they brought over artists of architecture and of sculpture to work upon their religious buildings. All this was elevating, and formed a sphere of moral and intellectual influence when all around was gross and material.

CHAPTER III

# EARLY CLASSIFICATION OF TEINDS AND METHODS OF COLLECTION

ACCORDING to the early conciliar decisions of the Christian Church all sorts of income were teindable—from commerce and industry, as well as from agriculture. The Council of Arles in A.D. 813 ordained that teind be payable upon one's work, commerce, or industry.[1] This was fair, as all classes of society had the services of the Church equally at their disposal.

Accordingly, the simplest classification of teinds is a dual one, namely—(1), Personal teinds, and (2) Real teinds. And both classes are found in Scotland in the thirteenth-century statutes. From a labourer, who contracted to give his services for half a mark (6*s.* 8*d.*) or less, it was sufficient to demand three oblations per annum by way of teind upon his wages.[2] Every tavern-keeper paid one penny of teind to rector or vicar.[3] The miller, in addition to paying teind upon the produce of the land let with the mill, paid teind upon his milling.[4] In 1134 King David I granted towards the erection of the new bishopric at Aberdeen a teind to be levied on all ships called *snows*, which traded to and from the port.[5] But these personal teinds disappear very soon not only in Scotland but all over Europe, and that simply because of the difficulty of estimating them and of collecting them. Fish teind was ordered to be commuted to a capital sum in 1864 in any parts of Scotland where it still survived.[6]

The second class was called predial teinds, or real teinds, and included both the natural and the industrial products of the land. Within this class there is a sub-division. We have

[1] Mansi, vol. xiv, col. 60.
[2] *S.E.S.*, vol. ii, p. 23.
[3] Ibid., p. 46.
[4] *Reg. Epis. Morav.*, p. 168.
[5] V. E. Clark, *Port of Aberdeen*, p. 1, 1921.
[6] Act 27 and 28 Vict. c. 34.

first what are called *Great* teinds. Another name for these is *Rectorial* or *Parsonage* teinds. By their Latin name they are *Decimae rectoriae* or *Decimae garbales*, or *Decimae majores*. They are the teinds levied upon all grains, wheat, oats, barley, &c., and they were the chief source of teind income for the Church; for in the Middle Ages each community depended for food upon the cereals produced in its own district, and therefore the greater part of the land in cultivation was given up to cereals. The second subdivision is the *Smaller* teinds, or *Vicarage* teinds, or, by their Latin names, *Decimae minores*, or *Decimae vicariae*. The latter name is given to them because, very frequently, these less important teinds were given to the poor vicar, who had usually to collect them himself, while the parson or rector kept for himself the more valuable teinds upon grain. These *Smaller* teinds included the teind of hay, which at that time was natural bog hay and not a sown grass mixture, and also the yearly produce of the stock animals, the teind of lambs, of calves, of foals, of dairy produce, butter, cheese, of carrots, leeks, and other garden produce. It is probable that these *Smaller* teinds were of more importance in Scotland than in other countries, doubtless because Scotland was not a fertile country then, and only small areas were in cultivation. If the vicar received a stated salary, then he collected none of the *Smaller* teinds, nor the Easter offerings, nor dues of marriages, baptisms or funerals.

In the Acts of the Parliament of Scotland personal teinds are called by the name *industrial*, whilst the predial teinds are called by the name *natural*.[1]

Here is an example in 1250 of how the teinds of Banchory were divided between the local resident vicar, who resided there and performed the Church duties, and the Monastery of Arbroath. The vicar received one acre of land, the altar dues, the teind of all the corn lands cultivated in the town, whilst the monastery held all the lands belonging to the

[1] *A.P.S.*, vol. ii, p. 390.

Church, the teinds of the rest of the parish outside the town lands, the teinds of all land that might in future be brought under cultivation, and forty pence in cash.[1]

These teinds were all payable *de jure divino* and *de jure civili*, but it is plain both in Scotland and in other Christian countries, from the repeated complaints in Church statutes, that there was difficulty in forcing payment from the 'Sons of Perdition'.

In all Christian countries certain lands were teind-free. These were lands gifted by rulers to certain Religious Orders for development and cultivation by these Orders, *cum decimis inclusis*. These lands passed into lay hands in various ways, and remained teind-free. In Scotland, up till modern times, we find that the Church endeavoured to recover payment of teinds from such lands, but not always with success. For example: in 1800 the Rev. James Badenach raised a case against his heritors, Colonel Fotheringham Ogilvie, and others for payment of teind.[2] In the decision of the court, it is stated that the history of this exemption is very obscure. Infeudation of teinds to laymen was prohibited by the Lateran Councils of 1180 and 1215 and by Provincial Councils of Perth in 1242 and 1296. But these prohibitions did not affect rights previously granted, and attempts to alienate were common later. A lay proprietor of such lands endeavoured to protect himself by having inserted in his title-deeds these Latin words: *Cum decimis inclusis et nunquam antea separatis*, meaning that teind rights were included in the title-deeds, and had never been held as rights apart from the ownership of the land. The Rev. James Badenach lost his case. Lands that were teind-free included the glebes of parsons or vicars, and the estates of Cistercians (an offshoot of the Benedictines established in 1098), Hospitallers (Knights of St. John, who about 1048 built a hospital for the care of pilgrims at Jerusalem), and Templars (an order founded in

[1] Cosmo Innes, *Scotch Legal Antiquities*, p. 186.
[2] See *Dictionary of Decisions*, Teind, year 1800.

1119 for the protection of the Holy Sepulchre and of pilgrims going thither). The Bull of Pope Innocent III, granting this freedom to the Abbey of Lindores, states: 'Let no one presume to exact or extort teinds from you, for your lands newly brought under cultivation, which you are cultivating with your own hands and at your own expense, or of your animals for food purposes.[1] No King had power to bestow land free of teind duty.

If teinds were not collected for forty years then they were lost by tacit renunciation. Land previously cultivated and given up to woods ceased to be teindable.

The teind was not always one-tenth part, as it ought to have been. One can easily realize the difficulty of collecting every tenth egg, or even every tenth sheaf, if the cultivators really made up their minds to cheat. And so quite early the tenth part was agreed upon as a fixed amount for a particular holding, in produce, or in money in later times. Arthur Young, in his *Travels in France* in the late eighteenth century, had noted this, and mentions the common teind as amounting to one-twelfth, one-thirteenth or one-twentieth.[2] It is difficult to make any estimate for Scotland in the early days. Stair affirms that about 1633 the teind amounted to about one-eighth of the grain produced.[3] The production of grain was no more than four to one, and an old adage divided the crop thus:

Ane to saw, and ane to chaw
And ane to pay the laird wi' a'.

As there is no mention in the adage of teind, it cannot date back to the time when teind-sheaves were drawn.

Whilst it might have been possible to collect the teind-sheaves easily when they were still in the field there must have been great difficulty in collecting the small teinds. Hence

[1] *Chartulary of Lindores Abbey*, Scottish History Society, p. 109, Edinburgh, 1903. See also *Chartulary of the Priory of St. Andrews*, p. 80, Bannatyne Club, Edinburgh, 1841, and *Monastery of Kinloss*, pp. 105-6, Society of Antiquaries, Edinburgh, 1872.

[2] Arthur Young, *Travels in France*, vol. ii, p. 271, Bury St. Edmunds, 1794.

[3] Stair, *Institutions of the Law of Scotland*, vol. i, p. 313, Edinburgh, 1832.

it was that the teind-holder held fast the teind-sheaves and left the poor vicar to do the best he could to gather in for himself the small teinds.

## THE LEADING OF TEINDS.

The teind was payable before any other tax was deducted, for it was a teind of the whole produce of the land. Pope Innocent III, at the Council of Rome in 1215,[1] had occasion to complain of this method of defrauding, by the paying of other dues before teinds were deducted (*ut decimae ante tributa solvantur*). There could be no question of any deduction by the peasant for seed, labour, or anything else: 'As God has reserved for Himself the tenth for a special purpose, which is, to show the universality of His dominion, we, desirous of safeguarding the income of the Church, and in order to remedy the ills of souls, have ordained that the payment of teinds shall precede the payment of other levies, in order to recognize the general dominion of God.'

The earliest records reveal dissension at the ingathering or leading of teinds. *Nullus sacerdotum decimas cum lite et jurgio suscipiat, sed praedicatione et admonitione.* 'Let no priest lead his teinds with lawsuit and strife, but after public proclamation and friendly warning.'[2] This is a law, undated, laid down by a king of the Franks.

Every peasant before the ingathering of his crops had to warn the teind-holder to come and take his teind. Sometimes this announcement was made at the church door or during the service. Sometimes the peasant had to inform the teind-holder up to three times. In principle the teind-holder did not draw or lead his sheaves personally, but a neutral person was named who took an oath of honesty. This neutral handed over the teind-sheaves to the teind-holder, or to his tacksman. The peasant could not proceed to carry off his own sheaves until this was done. No harvesting was allowed by night or within twenty-four hours of the

[1] Mansi, vol. xxii, col. 1042.

[2] Baluzius, t. 1, col. 1296.

final warning of the teind-holder. The peasant had to cut and bind the grain, and the sheaves had to be of a regular size. Sometimes the size of the sheaf was prescribed by the teind-holder, who, when he came to draw his teind, measured or chained his sheaves. The length of the chain or measure was a frequent source of quarrelling. Hay and vegetables were put in similar heaps. Lambs, kids, piglings, and chickens had to be of average size, neither the biggest nor the smallest. Naturally the peasants did their best to escape payment, and they tried all sorts of deceit. Brawls were very frequent. The doors of the teind-holder's barn were often knocked in and the teind-sheaves thrown to the wind. Teind-holders frequently came to the field armed, or with armed help, in order to draw their teind, and they threatened to burn the whole crop if the peasants attempted to cheat.

If the teind-holder or his tacksman failed to appear he was entitled to one or two summonses, and if he still failed to come and lead his teinds the farmer proceeded with his own leading and left the teind-sheaves on the field; but the community had still to watch by day or night that the teind-sheaves were not taken or destroyed. Until these teind-sheaves were taken away, the community could not pasture their herds and flocks on the stubble for fear of destroying the teind-sheaves. The stooks were made up of ten or eleven or twelve sheaves according to the rate of teind. One sheaf from each stook went to the teind-holder, so that the teind-holder got a sample sheaf of all the qualities of grain throughout a rig. The odd sheaves in a rig were counted in the next rig. The teind collector could not enter the field without the proprietor, as cheating by both parties was common. By agreement, teinding was sometimes done in the corn yard or in the granary, but the field method was the correct way; and if any dispute arose the teind-holder could always revert to this method. The teind-holder had to pay the expense of transport, and as the farmers were not all harvesting on the same day a great deal of transport to the barns of the teind-holder

was entailed. Then the teind-holder bore the cost of threshing his teinds, and it was hard on priests who led only small parts of teinds and who were too poor to employ help. It is not surprising, therefore, that very early in Scotland the teind-sheaves were often commuted into a sum of money, payable in one sum or by instalments throughout the year. This was an excellent arrangement, as it eliminated the middleman tacksman, who always tried to make as much profit as possible. For in this way all expense of collecting was avoided by the teind-holder, and if the sum was definitely fixed, then the farmer was encouraged to improve and extend the cultivation of his field. We shall find that in Scotland, owing to the early commutation of teinds by law beginning in 1633, an impetus was given to agriculture, which the farmers in England had to wait for until 1836.

By the Acts of 1424 and 1425 [1] the priest in Scotland was allowed to let out his teinds on tack. At this period also we find some references in the statutes of the Church to the difficulties of collecting teinds. It is stated that the old and reasonable custom in Scotland was for sheaves to be brought to barns and there teinded, but that 'Sons of Perdition' were wont to scatter the teinds over the field, declining to bring them to the barn.[2] Again the priest, when he had received his sheaves, was unable to find a market for them. In those days transport to other parts was very difficult, if not impossible. Feudal lords sometimes forbade their vassals to buy, and such lords were excommunicated by the Church.[3] Pope Innocent the Fourth, in 1250, complained that the feudal lords in Scotland were preventing the payment of the teind of hay pasture and of mills.[4] He pointed out that the tacksman of the mill ought to pay to the priest one-tenth of his rent or that the proprietor should pay one-tenth of the multure. The obligation to pay these teinds was questioned, on the ground that the land given for pasture to the parish

[1] *A.P.S.*, vol. iii, p. 9. [2] *S.E.S.*, vol. ii, p. 24. [3] Ibid., p. 41.
[4] *Reg. Epis. Morav.*, p. 334, and *S.E.S.*, vol. ii, pp. 242 and 23.

church took the place of the hay-teind. Similar difficulties with the teinds of hay, of wool mills, and of fisheries are met with in England and France.[1] This all goes to prove that personal teinds very early fell into desuetude in Western Europe.

It is to be noted that in Scotland there is very little legislation by Parliament for teinds until the Reformation. Are we to conclude that the Church was able by its own Councils and by its own sanctions to collect all its teinds? It might be safer to infer that the central authority under the King was not sufficiently powerful to compel obedience to its orders by the unruly barons throughout Scotland. We have evidence of this inference in the 'Missal' of Arbuthnot of 1492, which is written in the vernacular. The curse of excommunication was invoked with bell, book, and candle on 'all false teinders; all those who withhold, or cause to be withheld, their own or other men's teinds, either by force, subtlety or might, from those who should have them; all those that reduce their teinds by fraud or by malice, to those who should have the teinds; may they be cursed, sitting, standing, riding, going, sleeping, walking, eating and drinking, in house and out of house. Cursed be such from the crown of their head to the sole of their foot. Few be their days . . . And as this candle is cast down from the sight of men, so may their souls be cast from the sight of God into the deepest pot of Hell ever to remain with accursed Nero the wicked Emperor and his accursed fellowship'.[2]

This general excommunication for the non-payment of teinds was to be published and fulminated in all churches four times a year. Other records of excommunication include 'Laymen withholding, invading, cheating, and carrying off possessions or any other dues and liberties of the Church'.[3] None were to interfere with clerics in the collecting of teinds nor to hamper the parson or vicar in his dealings

[1] *S.E.S.*, vol. ii, p. 265.

[2] *Statutes of the Church of Scotland*, p. 5, Scottish History Society, Edinburgh, 1907.

[3] *S.E.S.*, vol. ii, p. 26.

with teinds, for example, by forbidding people to buy.[1] 'It has been brought to our notice by certain people that certain feudal lords do not allow the men under them, vassals and tenants, to buy teinds from the rectors of churches, when it behoves such to sell the teinds, or even to set the teinds in tack, and when in remote wooded districts the teinds cannot be collected by the same. We prohibit by all means this to be done, decreeing that whoever shall do such a thing, if they do not desist when warned, shall be punished by the priests with sentence of excommunication'.[2] Again, 'we ordain (a provincial council) that whatever 'Sons of Perdition' shall steal teinds, or take them by force, or in secret, or shall leave the teinds of sheaves cut in the fields, or scatter them over the fields, and shall decline to make amends for such evil according to reasonable and ancient customs, shall be compelled by Church censure to make satisfaction to God, and to the church and the priest injured, or to the losers—this to be published in all churches in our dioceses three times a year'.[3] But it was decreed that extreme punishment for simple non-payment of teinds should not be inflicted. The sacrament of the Eucharist, for example, was not to be denied on Easter Day to those parishioners who had failed to pay teinds or other dues.[4] In the records of the diocese of Aberdeen we find an example of Church punishment for non-payment of *Second* teinds. The district of Formartine belonged to the Crown, and the Crown paid a teind of its rent to the Bishop of Aberdeen. This teind of rent was known as *Second* teinds. Formartine was given to Sir James de Lyndesay, who ceased to pay *Second* teinds, as the Sheriff did not compel payment. Bishop Tynningham excommunicated the nobleman's bailie and collector of rents and fifty tenants. All appeared

[1] *S.E.S.*, vol. ii, p. 23. [2] Ibid., p. 41.

[3] Ibid., p. 24, also p. 59, Synod of Diocese of St. Andrews at Musselburgh, 5 May 1242.

[4] Ibid., p. 40. This phrase not to be used, 'Quid mihi vultis dare et ego eum vobis tradam'?—which means, 'What are you willing to give me if I give you the Sacrament'?

before the Bishop at the Chapel of Rayne on 9 March 1382; they did penance, and were absolved and soundly rated and frightened by the Bishop.[1]

In the diocese of Glasgow[2] we find that in 1225 Duncan, Lord of Carrick, solemnly promised to help the Bishop of Glasgow in the collecting of teinds, and to compel his vassals and tenants to pay; and if they resisted he promised himself to lend a hand *manum opponet adjutricem*. If recalcitrants required to be excommunicated, Duncan himself agreed to confiscate their goods after the lapse of forty days! In 1226 the Earl of Lennox made the same promise. One wonders if it was to the advantage of the Church in the long run to have the local nobles taking such an active part in the collecting of teinds. We shall, alas, find them intromitting and interfering in teinds more and more as we approach the period of the Reformation.

Undoubtedly in the Middle Ages the leading of teinds was a matter of great difficulty. The assessment was defective in the absence of any precise text of the rate. The law was based solely on custom, and so abuses by collectors were as frequent as frauds by farmers. Appeal to the Court of the Baron or Sheriff was not satisfactory, because many Barons intromitted extensively with teinds. Naturally farmers always gave evidence to suit their class, and barons would do the same. When the teind was divided among several tacksmen these fought about precedence. Another source of quarrel between priest and tacksmen was the teinding of *novalia*, in which case the priest undoubtedly had a first claim. In the midst of all these quarrels the priest was bound to lose authority over his flock, and this was one of the causes of the Reformation movement. When the teind-holder resided far away, undue delay was caused to harvesting; tacksmen frequently bought their teinding rights by auction, and like the tax-gatherers of Rome they were in-

[1] *Reg. Epis. Aber.*, vol. i. pp. 163–6.

[2] *Reg. Epis. Glas.*, vol. i, pp. 117–19, also pp. 15, 70, 116. Bannatyne Club, Edinburgh, 1843.

clined to be too greedy. Farmers often had to wait a long time, and thus suffer injury to their cut crops. No animals could be pastured on the stubble until the teinds were removed. If the teind-sheaves were carried away from the district there was a considerable loss of straw to the district, and before the introduction of the turnip in the eighteenth century farmers in Scotland invariably had difficulty in feeding their animals through a long winter. From the economic point of view the teind was a bad form of tax. Taxes should be fixed and not arbitrary. The method of payment, the time of payment, the amount of payment should all be known to the person taxed, and to the public. Now, in the case of the teind the rate was fixed only by custom. No attention was paid to the nature of the soil. The time of payment varied with the arrival of the teind-holder. Some farmers paid in sheaves, some in grain, and some in money, but in all cases the peasant was in the hands of the collector. This uncertainty was a greater evil even than the unfairness of inequality of rate. Again, a tax should do no harm to reproductive capital. The farmer was not even allowed to retain the best of his crop for seed purposes. What should we think to-day of a tax imposed upon the gross output of a factory instead of upon the profits of the undertaking? A tax based, as the teind was, on use and wont, is open to all sorts of corruption.

There must have been great difficulty, too, in collecting the teinds of the young of animals—calves, lambs, piglings, &c. These were the *blood* teinds, or *sacramental* teinds, which always went to the priest who administered the sacrament. Let us suppose that a peasant had only one lamb for the season? How was the priest to get one-tenth of that lamb? The Church had made provision for this, for we find in the statutes [1] that the teind of a lamb was estimated in money at one obol or halfpenny, of a young pig the same, and of a kid one farthing. Then the priest claimed a teind of the

[1] *S.E.S.*, vol. ii, p. 44.

milk, and a penny as teind of the calf; and if the calf took all the milk the peasant paid three pence.

As regards cheese, the milking period of a cow was estimated at one hundred and forty days, and the priest claimed the teind cheese made upon fourteen days when the milk was fairly abundant (*ubi lac est uberior*), and not when the cow was going dry.[1] Nowadays a well-fed cow may never go dry at all between lactation periods.

Foals had to be calculated for teind purposes at the current price of the times.[2]

From each full-grown hen the priest claimed two eggs.[3] This would give an average egg production per annum of twenty per hen. Nowadays a hen can lay up to 300 eggs per annum, or more. In the Scottish egg-laying tests, 1928, the most notable performance was that of a White Leghorn pullet, which laid 292 eggs during the forty-eight weeks of the test, and only eight of which were second grade. Instead of laying a few eggs for reproductive purposes, hens have been made to lay fifteen times as many for man's needs.

Chickens and young geese were teinded at the current value.[4]

When a farmer had a number of calves large enough to be teinded, namely, nine, ten, or eleven, the farmer claimed the two best ones, and the priest chose one from those remaining [5] (*tertius in electione*).

If a farmer had seven lambs, the priest could take one and pay three halfpence to the owner.[6] If there were eight, the priest took one and paid a penny. If there were nine, the priest took one and paid a halfpenny. In this way, if we reckon the teind strictly at one-tenth, then a lamb was worth five pence and a calf ten pence.

Difficulty arose when animals were moved from one parish to another.[7] In this case, for teind milk, only those months

[1] *S.E.S.*, vol. ii, p. 46. [2] Ibid., p. 46. [3] Ibid., p. 47. [4] Ibid., p. 21.
[5] Ibid., p. 44. [6] Dowden, *Medieval Church*, p. 171.
[7] *S.E.S.*, vol. ii, p. 51.

were counted in which the cows and sheep were in milk; but for the teind of wool all the months of the year were reckoned. For teind calves and lambs, reckoning was made of the months from the time of conception to the time of sterility. In the above cases, teind was divided between different parishes, according to the period of residence in each (*pro rata temporis*). Periods of time less than one month were not reckoned.[1] If herds spent the day in one parish and the night in another the teind was divided into equal halves.

If animals fed in two parishes and slept only in one, the parish in which they were folded received three-quarters of the teind, and the parish in which they did nothing but feed received the other quarter teind.[2]

If a farmer bought sheep and lambs from another parish, and brought them home, the priest of the new owner drew the teinds of milk, lambs, and wool, and settled a share upon the other priest in proportion to the time spent in each parish from the date of conception to the end of the suckling period.

The priest likewise claimed a teind of pasture on the common grazing. For example, all the animals on the common pasture were divided into nine parts, and the priest was allowed to send, for grazing, animals to the number of the tenth share.[3] In other cases pasture had to be provided near the church for eight cows and one horse belonging to the priest.

In the diocese of Moray the parson sometimes drew three halfpence for every acre of land under barley and one penny for every acre under oats, in place of teind.[4] Thus commutation was common quite early.

With regard to fish, no parson or vicar was allowed to exact teinds from stranger fishermen belonging to other parishes.[5]

The diocese of Moray provides us with interesting evidence

[1] Dowden, *Medieval Scotland*, p. 169.
[2] *S.E.S.*, vol. ii, p. 22.
[3] Ibid., p. 45,
[4] *Reg. Epis. Morav.*, p. 168.
[5] Mansi, A.D. 1215, vol. xxii, col. 1042.

of how various Churchmen with claims to teinds settled disputes among themselves. In 1399 there was a dispute in Elgin [1] between the bishop and the vicar about teinds of garden produce, namely, of leeks and of kale. Two neutral Churchmen were appointed to consider the case, namely, the Treasurer of the Cathedral and the Prebendary of Duffus. These two referees diligently examined the provincial statutes of the Kingdom of Scotland. They heard the reasoning of both parties in the dispute, and with the advice of skilled men, sitting before the altar, and having before their eyes God alone and invoking the name of Christ, 'we decree that the teinds of these enclosed gardens belong to the vicar and not to the bishop. We declare, however, that if any burgesses or others within the burgh make new gardens near the old gardens outwith the bounds of the old gardens the teinds of these will belong to the bishop. But the teinds of flax of leeks and cabbages belong to the vicar, wherever they will have been sown'. We have found no mention of the teinding of pigeons in Scotland. Probably the dovecot was a later innovation in Scotland. Regarding wood and peats, the Bishop and Chapter of Moray issued in 1369 the following decree: [2]

'That those transporting or dragging wood from a grove with oxen and waggons pay to their priest a tenth penny as a teind in summer time when the oxen are feeding on grass, but in winter when the oxen are feeding on forage they shall pay a thirtieth penny as a teind to their priest. It was also decreed that the same rule be extended to include those transporting peats [*petas*] or similar material.'

In 1291 there is mention in the Acts of Scotland of a papal Bull from Pope Innocent V, authorizing the King of England to take tithes from the clergy of Scotland, if he agreed to go to the Holy Land upon a crusade.[3] This was before Bannockburn. King David the Second in 1366 repeated the royal enactment of William the Lion for the payment of teinds,

[1] *Reg. Epis. Morav.*, p. 328. [2] Ibid., p. 167. [3] *A.P.S.*, vol. i, p. 108.

imposing in addition to the penalty of excommunication a fine of ten pounds to the King for enforcing the penalty.[1] This King likewise authorized the clergy to let their teinds on lease if they chose, and that no one was to presume to hinder the clergy from so doing.[2] In 1424 James the First repeated this legislation in the following form: [3] 'In the first, to the honour of God and the Holy Kirk, that the Holy Kirk and the ministers of it enjoy their old privileges and freedoms. And that no man prevent them from setting on lease their lands and teinds under all penalty that may follow by spiritual law or temporal.' This Act was repeated at Perth in the following year (1425). This Act has a further interest to us in that it is one of the first Acts to be written in the Scots language, and not in Latin or French. Cosmo Innes says that Scots appears first in a General Council of Robert the Third in 1398.[4]

It would appear that after this royal permission was given for dealing in teinds abuse must have spread fairly rapidly, for in 1489 James the Fourth enacted to all and sundry dealing in teinds that no one was to intromit with teinds without the permission of the incumbent.[5]

'In the first, for the honour of God, liberty and freedom of Holy Kirk and Kirk men, it is statute and ordained that all privileges freedoms and immunities be observed and kept to them in time coming as has been in times of our sovereign Lords said and forebears of most noble mind, with this addition that the takers and intromitters of the lands, teinds, oblations, possessions or dues, of holy church without tack or assedation of the possessing vicars or of their farmers, that to be a point of dittay in time to come.'

Behind this Act we can read the second great misuse of teinds, namely, the passing of the leases of teinds into the hands of powerful and unscrupulous laymen to the great loss and moral injury of the Church. The first great evil in the

[1] *A.P.S.*, vol. i, p. 498 b.
[2] Ibid., p. 498 b (1366).
[3] Ibid., vol. ii, p. 3 a.
[4] *Scotch Legal Antiquities*, p. 154.
[5] *A.P.S.*, vol. ii, p. 218.

misdirection of teinds was the passing of the teind income away from the uses of the priest, of the poor, and of the church fabric within the parish, into the hands of the wealthy clergy in cathedrals and monasteries.

Here is one more sidelight upon teinds from the Acts of the Parliament of Scotland. The Abbot of Jedburgh in 1546 protested to Parliament that certain men in Dundee had declined to pay his teind-penny upon the composition of an escheat. The men of Dundee asked for instructions from Parliament.[1] Here we can see how the long arms of the abbeys in Scotland stretched over the whole land to gather in Church revenues of all kinds. We can also see that at this date (1546), as we approach the Reformation, the abbeys are having difficulty in gathering in their revenues.

[1] *A.P.S.*, vol. ii, p. 465.

CHAPTER IV

# THE ECONOMIC ADVANTAGES AND DISADVANTAGES OF TEINDS IN THE MIDDLE AGES

NOW that we have disclosed a system of teinding, well organized in Scotland in the thirteenth century, we might endeavour at this point to estimate the advantages and the disadvantages of teinds.

## THE ADVANTAGES.

1. The teind was a simple and direct method of providing an existence for the priest, of maintaining the church buildings, and of supporting the poor.

2. There was an element of justice in the theoretical teind, in that every member of the community should contribute one-tenth part of his crops or profits.

3. In those days of a primitive social order of small communities, of few crops and sources of income, teinding was a fairly easy matter, if there was strict law and order.

4. The teind was paid mostly in kind, and a peasant likes this method of payment. A farmer will much rather give a bag of potatoes to a hospital than contribute half a crown in cash.

5. The teind did not have the sternness of a fixed tax. It varied with the harvest, good or bad. If the harvest were good, the peasant did not miss the teind so much; if the harvest were bad, it was all the smaller a tax in proportion.

6. The teind was used on the spot, before the eyes of the taxpayer, who could say to himself: 'I am paying for priest, church service, church buildings, and the poor'; for a part was merely in the hands of the priest on behoof of the poor of the parish.

7. The collecting of the teind was by friendly agreement. Doubtless many frauds were overlooked by the priest, and possibly the total collected in the early days was much less than one-tenth.

8. The custom in some lands of holding a teind banquet united the priest and his parishioners in cordial harmony.

9. Roads were non-existent, transport was rudimentary, and the priest could not get food from elsewhere.

10. No money was in circulation except in the small centres of commerce; little or none of the produce of a rural parish was sold.

11. The peasant was a simple Christian believer and fond of his priest, to whom he readily gave a share of his harvest as a thank-offering.

12. The peasant knew he would be relieved by the priest on a day of misfortune.

13. The peasant was a victim of habit: he never troubled to think out this question or any question.

## THE DISADVANTAGES.

Adam Smith, in his *Wealth of Nations*,[1] laid down four principles of taxation, which have become classical:

1. The subjects of every State ought to contribute to the support of the Government, as nearly as possible in proportion to their respective abilities, that is, in proportion to the revenue which they respectively enjoy under the protection of the State. In the observation or neglect of this maxim consists what is called 'the equality or inequality of taxation'. If we apply this principle to the teind, then it was a very unfair tax. For all the subjects of the State were not liable to pay it, but only those engaged in agriculture. Those persons engaged in industry and commerce paid no teind although they enjoyed incomes far exceeding those of the peasantry. Again, while one farmer might have had a crop amounting to one thousand chalders (1 chalder = 16 bolls, 1 boll = 10 stones), he could easily spare one-tenth to the Church. On the other hand, a poor crofter with a total production of possibly ten chalders or less could ill spare one-tenth of his crop for the Church. In fairness to the poor

[1] *Wealth of Nations*, Book V, chap. 2.

crofter, it would have been necessary first to allow him a fixed amount free of taxation upon which he could live comfortably. The poverty of Scotland, as reported by travellers from abroad in the Middle Ages, was proverbial.[1] In modern times every man is first allowed a subsistence allowance before the balance of his income is taxed for the maintenance of the State.

2. The tax which each individual is bound to pay ought to be certain and not arbitrary. The time of payment, the manner of payment, the quantity to be paid ought all to be clear and plain to the contributor and to every other person. When it is otherwise every person subject to the tax is put more or less in the power of the tax-gatherer, who can either increase the tax upon any obnoxious contributor or extort by terror some gift or perquisite to himself. The uncertainty of taxation encourages the insolence and favours the corruption of an order of men who are naturally unpopular, even when they are neither insolent nor corrupt. The certainty of what each individual ought to pay is in taxation a matter of so great importance that a very considerable degree of inequality is not nearly so great an evil as a very small degree of uncertainty. Once more the teind falls short of this principle. The farmer could not estimate beforehand the exact quantity that the teind would take from him, and what was even worse, he was uncertain when the tax-gatherer would come and take away his teind.

3. Every tax ought to be levied at the time, or in the manner in which it is most likely to be convenient for the contributor to pay it. If the teind-holder or his tacksman had always come when summoned to take away his teind, then the teind would have been a tax in due accord with this third principle. But we know that it was a perpetual grievance for the farmers that the teind-holder or tacksman regularly delayed to come and take away his teind. In a later chapter we shall quote Acts of Parliament which endeavoured to abolish this evil,

[1] See Hume Brown, *Early Travellers in Scotland.*

but there seemed to be no end to this trouble until the commutation of teinds.

4. Every tax ought to be so contrived as both to take out and keep out of the pockets of the people as little as possible, over and above what it brings into the public treasury of the State. A tax may cost the people a great deal more than it brings into the public treasury in the following ways: First, the levying of it may require a great number of officers whose salaries may eat up the greater part of the produce of the tax, and whose perquisites may impose another additional tax upon the people. Most certainly the leading or collecting of teinds was an expensive affair. All crops were not ready at the same time. The collector had to return to the same district again and again, and it cost money to provide men and transport for the teind-sheaves. Secondly, a tax may divert a portion of labour and capital of the community from a more productive to a less productive employment. Again, the collecting of teinds in this respect falls to be condemned. Thirdly, by the heavy penalties which those poor individuals incur who attempt unsuccessfully to evade the tax, it may frequently ruin them and thereby put an end to the benefit which the community might have derived from the employment of their capitals. An injudicious tax offers a great temptation to cheating. In the case of the teind, we know that farmers and teind-collectors alike did their best to cheat, and that there was no end to the number of lawsuits on the subject of teinds. Fourthly, by subjecting the people to the frequent visits and the odious examination of the tax-gatherers it may expose them to much unnecessary trouble, vexation, and oppression. Here again we know that this was the case with teinds. The only conclusion therefore that we can draw, from an application of the principles of taxation laid down by Adam Smith to the teind, is that the teind was a thoroughly bad tax.

John Stuart Mill [1] lays down a fifth rule of taxation,

[1] *Principles of Political Economy*, vol. i, p. 402.

namely, that a tax should fall on income and not on capital. Now the teind was levied upon the farmer's whole capital, both of animals and of produce, and therefore once more in the light of economics it falls to be condemned.

At this point we might summarize the evils of teinding:

1. By far the most serious evil was the fact that the teind was levied on the gross total crop. No allowance at all was made for expenses, wages, tools, seed, animals, &c. The farmer did not receive a subsistence allowance before this tax was levied. In the light of modern economics this is rank heresy, for only the net product should have been taxed. In the case of districts with a poor soil and a low return of crop, the cost of production was relatively much higher, and the teind was a burden unbearably heavy. In years of famine—and these were very common in the Middle Ages when a district was entirely dependent upon its own products for food and clothing—the net crop diminished far more rapidly than the cost of production. In the case of rich land the cost of production may have been about one-half of the crop, and in the case of poor land it may have cost two-thirds or four-fifths of the crop to cover the expenses of production. Accordingly the teind as a tax was very much heavier upon the farmer who was struggling to produce a crop from a poor soil. Such a farmer had to work harder and expend more upon his poor soil, and the tax upon him was out of all proportion.

2. Only the rural population was subject to the teind. At the beginning of teinding incomes from industrial, commercial, or civil sources were practically non-existent, but with the development of industry and commerce there was a great change, and incomes from these sources were not subject to teind. The teind too was regulated by custom and was excessively high in certain regions. It ought to have been regulated in proportion to the fertility of the field.

3. It was wrong to teind the grain which was destined to be the seed of the following year. The very best sheaves should have been selected and laid aside for seed purposes, with a

view to the improvement of agriculture. Undoubtedly the increase in the production of grain was seriously hampered throughout the Middle Ages by the teind. It is well to remember that up to the eighteenth century grain production in Scotland was extremely low, being only fourfold. When one-fourth of the total crop was required for seed, it was cruel to exact one-tenth of the whole in taxation.

4. The cost of collecting the teind was high, for anything from 10 to 25 per cent. of this tax was expended in the collecting. Men, horses, and wagons were required to carry away the teind-sheaves, and these were required over an extended period of time during which the various crops were ripening.

5. As waste land was brought under cultivation, these new fields were promptly made subject to teind. This was a big obstacle in the way of progressive agriculture. The farmer who was progressive and who introduced new crops and brought new land under the plough was most heavily taxed ; and he least deserved it, for he must have expended a great deal in extra labour to produce these new crops. We find that arable land was deliberately turned into woods and natural waste land for the purpose of avoiding the payment of teinds. It was a tremendous advantage to Scotland that the commutation of teinds was made possible so early as 1633. The modern development of agriculture was about to begin, and Scottish farmers had not this burden to bear as they introduced new crops and trenched new land for cultivation. The teind remained as a heavy burden and a handicap upon agriculture in England until 1836, and in France until the Revolution in 1789.

6. Teinding inevitably caused great annoyance and delay to the farmer at harvest time. The farmer could not remove a straw before the arrival of the teind-holder or his tacksman, who was more influential than the farmer. Until the teind-sheaves were removed, a guardian was required for the crop by night and by day. It was impossible to allow the cattle to graze upon the stubble before the sheaves were removed.

And in Scotland the risk of bad weather was particularly serious. It is difficult nowadays to believe that so little respect was shown for the economic necessity of the situation.

7. The removal of one-tenth of the straw was a serious matter for the farmer, and as a rule the straw was sold by the wealthy teind-holder outside the parish and at a high price. Straw always commanded a high price, for fodder was always scarce for the cattle in the long winter, and before the eighteenth century the turnip was unknown. The removal of the straw was also a loss for dung. It did happen sometimes that the teind-straw was sold to the farmer on the spot.

8. When the teind-holder did not come and fetch away his teind at once when requested there was great risk of loss by theft under cover of darkness.

9. A very serious evil lay in the fact that the local church did not profit as it should have done from the local teind, but the share of the big Churchmen and lay teind-holders increased unduly. The wretched condition of the parish priest in France in the eighteenth century before the abolition of tithes was well described by Voltaire: [1]

'I pity the lot of a country priest, obliged to fight for a sheaf of wheat with his miserable parishioners, to take them to court, to exact tithes of lentils and peas, to be hated and to hate, to spend his miserable life in perpetual quarrels, which debase his soul and embitter it. . . . I pity still more the priest subsidized by the teind-holder, to whom monks who are the chief teind-holders dare to give a pittance of forty ducats, to go for a whole year miles from his hut by day and by night, in rain, in sun, in snow, in ice, and do the most disagreeable duties and the most useless; while the abbot teind-holder drinks his Volney, Beaune, Chambertin, and Sillery, eats his partridges, his pheasants, and has a palace built. The disproportion is too flagrant. In all the North, in half of Germany, in Holland, in Switzerland, they pay their clergy with money from the Treasury. Their courts of law do not resound with disputes between lords and priests, between the big teind-holder and the little teind-holder, between the shepherd demanding and his intimidated flock.'

[1] *Dictionnaire Philosophique*—article 'Curé de Campagne' by Voltaire.

We do not expect Voltaire to be defending the clergy and the tithe, yet there was abundant truth in his statements, even if we discount a little exaggeration. Voltaire wanted the priest to live off the altar and in a seemly fashion.

10. The original objects of teind taxation were completely neglected. The priest did not get his share, the poor were neglected and lost their interest in the tax, and the church and manse were not kept in proper repair.

11. The misuse of teind, coupled with the demoralization of the clergy, must have caused serious demoralization and unbelief among the people, who accordingly could see no reason for paying teinds at all. The people looked on and saw their teinds sold or leased or bequeathed to all and sundry, and that too without any obligation towards the Christian service of the parish. The peasants must have thought this monstrous, and we can imagine their wrath. Relations between clergy and people must have become very strained, and we can readily understand the sweeping changes of the Reformation. It is little wonder then that throughout Western Europe the term 'Tithe' became synonymous with illegal taxation, levied with brutality and vexation.

12. As payments were made to the priest in grain or animals he was obliged to devour his income or see it depreciate. Saving was impossible.

If the teind had remained in its original form, and if this tax had been used solely for the Christian and social advantage of the parish, then we might have had some good to say of it. If all the members of the community had been Christian, then all would have shared in the advantages of the local teind. As a rule the peasant would love and respect his priest, and there would have been sufficient provision for the parish priest. He would have been permanently resident in his parish, and devoting all his energies to the parishioners of his own single parish. As a rule a fair stipend would have been paid for fair service. There would have been no hostility between the parson and his flock. The peasant would

willingly have given one sheaf in ten to his faithful friend and adviser in things temporal and spiritual. Very early in the history of the teind the advance of civilization, unaccompanied by effective sanctions of the law in Scotland, and coupled with the festering and spreading corruption within the Church, created all these evils in teinds, which were in the long run to lead to their commutation or abolition, not only in Scotland but throughout Europe.

CHAPTER V

# ABUSES IN METHODS OF COLLECTION AND IN APPLICATION OF TEINDS IN THE MIDDLE AGES

*Lo, this only have I found, that God hath made man upright; but they have sought out many inventions.—Ecclesiastes,* vii. 29.

WE have found that the early Christian Church endeavoured to teach the divine origin and purpose of tithes. As early as A.D. 585 the Council of Mâcon ordered the payment of tithes, with the triple object of assuring a living to the priest in the parish, help to the poor, and the maintenance of the church building.[1] We must admit that, on the whole, this arrangement was quite sound, and suitable for the civilization of the times. The parish priest was a necessity for the peasants, for advice, and for friendship. All the parishioners were within one church and one creed. The priest was entitled to a decent living. In 779 Charlemagne decreed that the Bishop be consulted by the priest in the dividing and apportioning of the tithes *et per jussionem et concilium Episcopi in cujus parrochia fuerit, dispensetur.*'[2] Naturally the Bishop assigned to himself, as first pastor of the diocese, a portion of the tithes, and Charlemagne seems to have tried to stop the early abuse of diverting from the parish too large a proportion of the tithes; for in a capitulary in 801 he took care to make no mention of a share to the Bishop;

'Let the priests themselves gather in the tithes of the people, and keep the names of those who have paid written down, and divide the tithes in the presence of witnesses, according to the canons, and let them first set aside one part for the embellishing of the church, a second part for the use of the poor and strangers, to be dispensed by their own hands with all humility and pity, and let the priests reserve for themselves the third part.'[3]

But upon the heels of this capitulary there follows a whole

[1] Mansi, vol. ix, col. 951.
[2] Baluzius, vol. i, col. 196.
[3] Ibid., col. 359.

series of capitularies by Charlemagne, all couched in identical language, in which orders are given to divide the tithes into *four* parts, and the first part is to go to the Bishop. *Ut decimae populi in quatuor partes dividantur. Prima pars Episcopis detur, alia clericis, tertia pauperibus, quarta in fabrica ipsius ecclesiae.*[1] Bishops, evidently, were growing in power.

From this time, therefore, began the withdrawing of an ever-increasing portion of the tithes from the parish for the upkeep of cathedrals, chapters, monasteries, and hospices.

The first to suffer were the poor of the parish, for Charlemagne had to deal with this frequently: 'It is the duty of the Church to feed the poor *Ecclesia pauperes pascere debet.*[2] The poor were losing their liberty, their property, and their right to justice. The Bishops are afraid to rescue the poor *pauperibus subvenire metuunt.*[3]

'It must be clearly pointed out to the priests once more that the tithes and offerings received from the faithful are for the poor, the strangers, and the pilgrims; the priests must treat this money not as their own property but as a trust. Let them know that they must give an account of it before the Divine Majesty, and if they do not administer this property as ordained they will be themselves pronouncing their own condemnation, and whatsoever the Pope orders after that, let it be done with prudence.' [4]

In spite of Church decrees and royal decrees, the Church failed to attain to the ideal and theoretical administration of tithes; faith ebbed and flowed, and human nature failed through its own selfishness. The share of the poor diminished and very often disappeared, not only on the continent, but likewise in Scotland. It is of the utmost importance to emphasize this point, that great evils were already inherent in the tithe system before it was imposed upon Scotland.

Even St. Jerome had pleaded for a share of tithes and offerings for monasteries and hospices.[5]

[1] Baluzius, vol. i, cols. 356, 428, 1104, 1205.
[2] Ibid., col. 524.
[3] Ibid., col. 534. *Capitulare admonitionis ad episcopos.*
[4] Ibid., col. 1104.
[5] Pithou, *Corpus juris canonici*, t. 1, p. 270.

Obviously it could not have been a simple matter for a bishop to collect and take delivery of one-fourth part of the tithes of all the parishes in his diocese. To meet this difficulty Charlemagne permitted commutation to money. 'But if there is any bishop who desires to take money instead of this tithe then let it be in his power to do so.'[1]

From the commutation of tithes it was a small step for the Churchmen to take to the direct sale of tithes. Although Charlemagne in 805 expressly forbade this,[2] yet the Church in times of financial stress repeatedly sold tithes to laymen. This was the beginning of centuries of evil in tithing. The Crusades were a common excuse given for the sale of tithes. Again and again the Church, through its Councils, strove to keep the tithes out of the hands of laymen. In 1078 Pope Gregory the Seventh protested at the Council of Lateran that tithes were used by laymen for the upkeep of dogs and concubines.[3] 'If a bishop grants tithes to laymen, he ought to be placed in the ranks of great heretics and anti-Christs; the bishop who gives and the laymen who receive will be condemned to the blazes of eternal fire.'

This was repeated at another Council of Lateran in 1139.[4] 'If laymen accept tithes from bishops or kings or any other powers, and if they do not hand them back to the Church, we beg to inform them that they are committing sacrilege, and place themselves in danger of eternal damnation.'

Laymen too, of sufficient local power, were openly usurping the places of priests, in order to be able to draw the Church revenues.[5]

'Further we enact anew and order that no one be ordained an archdeacon or deacon, unless he be in reality a deacon or priest; but as for archdeacons or deacons who are already in office without the foresaid ranks, and in their disobedience, declining to be ordained, let them be deprived of office. But we forbid that these offices be given to youths or to those devoid of sacred rank, even

[1] Mansi, vol. xiii, col. 1094.
[2] Baluzius, vol. i, col. 1212.
[3] Mansi, vol. xx, col. 510.
[4] Ibid., vol. xxi, col. 528.
[5] Ibid., col. 528.

though they are outstanding in wisdom and worthy living. We forbid churches to be entrusted to false priests, and each church ought to have its own priest.'

We are soon to find all these same irregularities in Scotland.

The Council of Lateran in 1179 had to deal with the same trouble,[1] and additional irregularities:

'And further, because certain laymen have been so bold as to appoint clerics to churches without the authority of the bishops, and to remove at their will the possessions and other properties of the church, and distribute them at their own will, and to presume to impose upon the churches themselves as well as upon the church servants, dues and exactions, we decree that those men who have done such things be smitten with anathema. And let the priest or cleric who has agreed to his church's being held in the hands of churchmen without the authority of the bishop be excommunicated; and if he persist, let him be deposed from his church office and order. And because certain laymen compel church parsons and even bishops themselves to stand under their authority, we decree that those who have presumed to do so be cut off from communion with the faithful. We also forbid laymen to withhold tithes, to the peril of their own souls, or to transfer them in any way to other laymen. If any one has accepted tithes, and does not hand them back to the church, let him be deprived of Christian burial.'

At this Council of Lateran in 1179 we note that Bishop Gregory of Ross was present, representing Scotland, *Gregorius Rossensis episcopus Provinciae Scotiae.*[2]

The same Council decreed that no one was to be ordained to the priesthood unless he were fully qualified to be so, *sine certo titulo.*[3] Nor was any priest to be allowed to hold more than one church or office.[4]

Still the laymen held on to the Church revenues, and all over Europe Church and Kings alike were equally unable to enforce the surrender of tithes, and tithes in the Middle Ages were bought, sold, and mortgaged as a common investment. The regular arrangement was that tithe-holders, whether

[1] Mansi, vol. xxii, col. 226.
[2] Ibid., col. 468.
[3] Ibid., col. 220.
[4] Ibid., col. 225.

bishops, abbots, chapters, or laymen, paid a poor vicar a miserable sum to do the minimum of service within the parish. These outsiders held the title-deeds of the tithes, and after forty years the law gave them definite possession by prescriptive right. This period of forty years was far too short in days of intimidation by strong men in the Middle Ages. It can be readily understood that such tithe-holders neglected the poor and the church buildings, just as they kept the poor vicar in a state of starvation. The monasteries did make a show of relieving the poor. They gave hospitality to travellers. On certain days of the week they distributed bread and meat outside the gates of their monastery. As the number of the poor grew, the alms were restricted to a smaller number of days in the week, and sometimes, when the poor became a nuisance, relief was discontinued entirely for a month or two. We can understand how such a method of relief, for the ease of the conscience and for the souls of teind-holding monks, gave rise to a class of professional beggar in the Middle Ages. Such scoundrels, or 'strong beggars' as they were called, left the land and settled near a monastery to wait for alms. Frequently the almoners were ill-treated by such beggars, who threatened pillage and even arson.

In the recent excavations by the Office of Works at the Abbey of Jedburgh the refectory of the abbey has been uncovered, and in addition to the windows there is in the wall a smaller opening, through which it is believed the almoner distributed food after the meals of the monks. This service of doles of food was a very bad method of relieving the poor, compared to what a priest could have done with one-third of his teinds amongst the necessitous people whom he would know intimately in his own parish.

When records begin in Scotland we find exactly the same evils in the administration and division of teinds. In an early decree in the thirteenth century concerning the life and conduct of priests, instructions were given by Church Council that priests must not let their churches on tack, except with

permission, nor must they give the free lands of the church to laymen in tack.[1] Again, at a meeting of the Diocesan Synod of St. Andrews held at Musselburgh on 5 May 1242,[2] it was decreed:

'We add also that no one is to take on lease any church or ecclesiastical benefice without our leave, and especially no one will have on lease two churches without our authority and permission, and further, that no layman must get a church on lease. Any agreement of this kind is to be null and void, and no hearing is to be given to any complaints concerning agreements of this kind that may have been entered into. Any rector or vicar who does this is to be deprived of his living for one whole year, neither is any priest to enter into commerce or secular work.'

At the same meeting at Musselburgh it was decreed that no parson or vicar should abandon his own parish church to go and reside in a town or farm unless of urgent necessity or with proper dispensation. 'If a priest being once warned does not return to his parish, let him be deprived of the fruits of his church for the space of four years.' All rectors must either reside at their churches or present vicars with an honest sustentation. The penalties for breaches of these decrees were, for a rector, ten merks, and for a vicar a hundred shillings.

If the resident parson held his own teinds, he collected these from his people and, if he did his duty faithfully, should have led a useful and happy life amongst people of his own class. But the non-resident teind-holders—bishops, canons, abbots, priors, laymen—let out the teinds to tacksmen. In this way they freed themselves from the annoyance connected with the direct lifting of the sheaves, and in case of a bad season they had a regular fixed income, for the tacksmen paid an annual rent. A common tack was for nine years, and the tacksman thus levelled up a bad year with a good year. He usually paid half his rent at Christmas and half at Pentecost,

[1] *S.E.S.*, vol. ii, pp. 51–2.

[2] Ibid., pp. 61 and 67; '*nisi urgente necessitate, aut cum eo fuerit dispensatum*'.

or on St. John's day. The tack was arranged either by friendly agreement or by auction. Tacksmen belonged to all classes of society—farmers, merchants, lawyers, priests, convents—and tacksmen very often sub-let their tacks. The custom was, that the tacksman stored his grain within the parish teinded, and sold his grain within the parish to prevent famine. A tacksman, if near to the teind-holder, paid his rent in kind or half in money. If at a distance from the teind-holder he paid entirely in money. The collecting of the teinds was an expensive business. Men were needed to gather the sheaves, horses to carry the sheaves, usually upon their backs, to the barn; men were needed to thresh with the flail, and these expenses amounted to one-fifth or even one-fourth of the whole. Often the tacksmen took more than their share, desiring naturally as much profit as possible, and as a rule the poor peasants dreaded them.

When a monastery developed waste land at a distance, it often founded a cell upon the new estate, built farms and barns, and left three or four monks to supervise the work. Often these cells were called *priories*, being in the charge of a *prior* and having a chapel. In this way spiritual service was supplied to the natives around the cell, and hence many new parishes took their origin. For example, Lesmahagow in Lanarkshire originated as a cell from the monastery of Kelso, and the Celtic monastery of Monymusk became a cell or priory of a religious order of the Roman Church, the Augustinians of St. Andrews. In the course of time the monks would themselves give up their spiritual duty to the natives around the cell and appoint a vicar to take their place. They themselves would appear only on great occasions to gather teinds and offerings, whilst the poor vicar got only a very small salary or probably only the chance offerings of the faithful. Hence arose that corruption within the Church and that ill will against the wealthy clergy which helped to bring on the Reformation. The Scottish Council of 1225 ordered that vicars should be paid a sufficient portion, at

least ten marks free of all burdens, and more in bigger churches.[1] The same Council allowed churches to be leased to laymen, but for not more than five years.[2]

In the same way, if lords erected churches on their lands, they were the patrons of the church and controlled the revenues and appointed a priest. They frequently disposed of their churches to monasteries, and the monasteries drew the teinds and sent some inferior priest to minister to the parish. The further and more terrible abuse was that lords appropriated these churches with their teinds, and disposed of them as a family property. When the lords sold them monasteries were frequent buyers. In all cases the general result was that the parish priest did not draw the teinds that lay within the shadow of his belfry. In 1179 Pope Alexander the Third [3] complained bitterly that the canons of York and elsewhere were starving the poor vicars in those parishes whose teinds belonged to York. So Pope Innocent the Third,[4] at the Fourth Council of Lateran, in 1215, complained that absent clergy or patrons did not leave one-fourth of the fourth—that is, one-sixteenth—of the teinds to the vicar, and therefore that no priest of any culture could be found for such parishes.

The cathedrals in Scotland were organized upon English models; for example, the cathedral of Elgin modelled its constitution and organization upon that of Lincoln,[5] for in the register of Elgin Cathedral we find letters on the subject from the chapter of Lincoln. The constitution of all the cathedrals was after this model; each had a chapter of secular canons. This body of ecclesiastics forming a corporation, holding property for the common good, shared the proceeds among its members, while to each member there was also assigned a separate allowance for his maintenance. Now this allowance, or *prebenda*, was as a rule derived from the

[1] Mansi, vol. xxii, col. 1225.
[2] Ibid., col. 1226.
[3] Ibid., col. 397. *De Vicariis Monachorum.*
[4] Ibid., A.D. 1215, vol. xxii, col. 1019.
[5] *Reg. Epis. Morav.*, p. 44.

revenue of some parish church, of which the canon was the honorary rector. As usual the spiritual charge of the parish was handed over to a vicar. The evil of non-residence by the parson in his parish was common in Scotland in the thirteenth century. At Aberdeen in 1256 the canons of the cathedral each had a house and a garden near the cathedral.[1] At Glasgow[2] 'certain of the canons are pleased to bear the name, and are willing to receive in full the revenues of their office, but they entirely neglect to perform the duties'. At Elgin[3] the rule nominally was to deduct one-seventh of the income from a parson for non-residence. Soon after that laymen were regularly appointed canons of cathedrals for the sole purpose of drawing the revenues of office. For example, King James the Second and King James the Fourth were canons of Glasgow when quite young. The life and conduct even of canons in full Holy Orders left very much to be desired. The statutes of the Church of Scotland are full of reprimands to clergy of all degrees for their moral misdemeanours. One example will suffice: in 1448 the Bishop of Brechin[4] admonished a dean, and advised him to remove his concubine.

In Scotland, as soon as written records appear, there is no lack of evidence of the misdirection of teinds away from parishes. This abuse was perpetrated by kings, noblemen, and clerics alike. Here is a charter of King David,[5] dated 1136, showing how a king disposed of lands and churches to a powerful bishop:

'David, by the Grace of God, King of the Scots, to all honourable men of his whole land, cleric and lay, Greeting! Let all present and to come, know that I have given granted and by this my charter confirmed to God, and the Virgin Mary, and to St. Machar and to Nectan, Bishop of Aberdeen, the whole town of Old Aberdeen, the half water of North Sclattie, &c. &c., the shire of Clatt, Rayne, Daviot, &c. &c., with the pertinents and

[1] *Reg. Epis. Aber.*, vol. ii, p. 41.
[2] *Reg. Epis. Glas.*, vol. i, p. 172.
[3] *Reg. Epis. Morav.*, p. 105.
[4] *Reg. Brech.*, vol. i, pp. 121–5.
[5] *Reg. Epis. Aber.*, vol. i, p. 4.

the churches of the same, the teind of the dues of the ships which come into Aberdeen, the teind of the grain supply at the same place, my teind of the rents of Aberdeen, the teind of the rents of Thanages and of other dues that fall to me within the counties of Aberdeen and Banff to be held and kept by the said bishop Nectan and his successors in pure and free alms as freely as any alms is held in my kingdom, myself being witness at Forfar in the thirteenth year of my reign on the thirtieth of the month of June.'

When a king died, it was customary for the new king to repeat by the new written charter all gifts of lands, &c., made by his predecessor. A king of course had the right and power of withdrawing such gifts. Accordingly in 1155 King Malcolm the Fourth renewed this grant to the Bishop of Aberdeen. In the same way in 1170 King William confirmed all grants made by previous kings to the Bishop of Aberdeen. This king also added the forest of Birse [1] with all the natives of the said land, only the thanes being excluded, and with all the other regular pertinents and dues.

When the kings made grants in this fashion the Pope was then asked to confirm these by a Bull, and so at Aberdeen in 1157 [2] we find a confirmation of this kind by Pope Adrian. He confirms all lands and teinds of the cathedral to the bishop and his successors. He recommends all men to preserve the rights of the bishop intact so far as possible and to defend them against the incursions of depraved men. The bishop is also allowed to have a chapter of canons about his cathedral.

'We therefore decree that it is by no means lawful for any man rashly to disturb the above-mentioned person and church or to carry away his possessions or keep them when carried away or to annoy him by any vexations whatsoever, but that all things should be preserved untouched and entire within the power and for the support of those for whom they are granted, and to be in time coming for their use, with the exception, of course, of the authority of the Apostolic See . . . he shall be cut off from the most sacred body and blood of God and of Our Lord and Saviour, Jesus Christ. But to all those who preserve his rights in the same

[1] *Reg. Epis. Aber.*, vol. i, p. 12. [2] Ibid., p. 5.

place the peace of Our Lord Jesus Christ is given and they shall find the reward of eternal peace.'

The kings were very generous to the bishops in the twelfth and thirteenth centuries. Here is just one more example:[1] King Alexander in 1241 gave to the Bishop of Aberdeen the free forest of Fetternear, and no one was allowed to cut wood or hunt therein, and the penalty for doing so was ten pounds.

Here is an example of the gifting of a church to a bishop by a nobleman. In 1200,[2] Duncan, Earl of Mar, gave the church of Logiemar to the Bishop of Aberdeen. This time we note that the gift is made on the express condition that the receivers shall pray for the soul of the giver and the souls of his wife and descendants. Duncan gave the church

'To God and to the church of St. Mary and St. Machar in Aberdeen and to the canons there serving God, for the amplification of divine worship and for common assistance to the said canons, and for the maintenance of one chaplain whom the said canons shall find for the perpetual celebrations of mass for my own soul, and for the souls of my ancestors, of my wife and of my heirs, in the said church of St. Machar and St. Mary, where I have vowed and bequeathed my body to be buried amongst our venerable fathers the bishops buried there, the church of Logiemar in pure and perpetual alms with one acre of land next the church and all the rightful pertinents thereof. Wherefore we desire that the aforesaid church of St. Mary of Aberdeen and the aforesaid canons should hold and possess the foresaid church of Logiemar as freely, as quietly, as fully, as honourably, as any church in the diocese of Aberdeen is held and possessed in accordance with the gift of any knight or baron.'

Here is an example of a gift of rent[3] by a private individual, this time to a monastery. As in the last case the giver is thinking of the safety of his own soul, and we are forced to the belief that cathedrals and monasteries acquired much of their wealth through the dread of Purgatory in wealthy individuals:

'To all the sons of Holy Mother church who shall see this

[1] *Reg. Epis. Aber.*, vol. i, p. 15. [2] Ibid., p. 16.
[3] *Antiquities of the Shires of A. B.*, vol. iv, p. 3.

writing or hear it read, William Pratt gives Greeting! Know all of you that I, by inspiration of divine piety and for the safety of my body and of my soul, and of those of my wife and of our children, have given and by these presents my charter have confirmed to God and the Blessed Mary and to monks of Deer, serving God here and now, and to those that will serve Him in future, in the name of our brotherhood, four shillings in silver for one stone of wax payable at Pentecost to these same men and their successors, by me and my heirs to the period above mentioned, from the rent of the Mill of Crichie, in witness of which I have put my seal to this writing. Witnesses Master Reginald Bustler, William de Blackburn, Ada de Blair, Gamelus, a priest of Aberdeen, Walter de Perthoch my steward and many others. Done in the year of grace 1246 on the day of St. Lambert Bishop and martyr, at Deer.'

In Scotland as on the Continent the poor vicar in the parish with all the work received a very small share, if any, of the teind. In 1247 Bishop de Ramsay [1] obtained permission from the Pope to fix a salary for each poor vicar acting in a parish within the diocese at 15 marks. Fordun, the chronicler, states that the Abbots of Arbroath and Lindores, who were big holders of lands and teinds in the diocese, were able to have this order rescinded through a Provincial Council decree. In England the Act 15 Richard II, A.D. 1391, was passed to secure more adequate payments to vicars.

All bishops did not forget the poor. We have certain outstanding exceptions in bishops who made definite provision for the poor out of the teinds held by them. Bishop Matthew Kyninmond of Aberdeen, in 1170,[2] allocated to St. Peter's Hospital near his own cathedral certain lands and teinds,

'along with the teinds of our domain of Aberdeen, except those teinds which we have assigned forever to certain priests who serve the church of Holy Mary. We grant also to these same invalids of St. Peter's Hospital a teind of our revenue [*can*], and of fines paid to us and of profits, and a teind of our rent both in meal and in barley and in fodder. A teind also of our wheat, of our salt, of our iron, of our meat, and of our fishes and foodstuffs used in our house. Wherefore we desire that the foresaid hospital

[1] *Reg. Epis. Aber.*, vol. i, p. xxiv. [2] Ibid., p. 11.

and the patients therein should hold and possess all the lands and teinds forenamed, and possessions, as freely and quietly as any institution of sick brethren holds and possesses in the Kingdom of Scotland.'

This same Bishop Matthew made a grant of land belonging to the church at Rayne to the Abbey of Melrose, but in his charter he orders that the teinds of that church and all its other dues must be maintained for the church of Rayne.[1]

To encourage the regular clergy to reclaim land and develop agriculture in western Europe exemption from the payment of teinds was granted by Church Council. A very natural abuse of this privilege was for the monks to purchase land far and wide and to endeavour to escape the payment of teinds in every case. Accordingly, in 1215, we find edicts to prohibit this abuse.[2] Cistercians are warned to pay teinds in all lands purchased for cultivation for which teinds are due.

In 1219 King Alexander renewed the payment of teinds of his rents and court fines to a new Bishop of Aberdeen: [3]

'Alexander, by the Grace of God, King of the Scots, to all honourable men of his whole land, both priest and layman, Greeting! May all present and future know that we have given and granted and by this our charter confirmed to God and Mary and St. Machar and Richard Poiton, Bishop of Aberdeen, all those gifts and freedoms, lands and churches and annual rents and teinds of our rents of thanages of boroughs and of all the lands and rents between the two waters of Dee and Spey in the Counties of Aberdeen and Banff with a teind of escheats and fines of our courts of our justice in these counties, wherefore we instruct you that you see to the payment to the said Bishop Richard and his successors from the foresaid lands and possessions, annual rents as well as teinds of our rents, and fines of our courts, between the said two waters of Dee and Spey in the Counties of Aberdeen and Banff; given at Kinghorn on the 10th day of May in the seventh year of our reign.'

In 1333,[4] upon a similar renewal by the same king,

[1] *Reg. Epis. Aber.*, vol. i, p. 10.
[2] Mansi, A.D. 1215, vol. xxii, cols. 1042 and 1043.
[3] *Reg. Epis. Aber.*, vol. i, p. 18.
[4] Ibid., p. 54.

interesting facts are disclosed regarding these payments. The rentals are already in money for a great part, but meal is also mentioned, and arrows. The teind is very often expressed for an estate in a sum of money; for example, £2 13*s.* 4*d.*, *pro decima*, with this addition that more ought to be received by way of teind according to the rental, *Sed plus forte recipi deberet secundum rentale.* This would imply that the Bishop was not satisfied with the sum fixed for a teind, and that the amount of teind was not really a tenth but was a sum agreed upon in money between the proprietor and the Bishop by agreement, *ex conventione;* there was therefore, thus early, difficulty in extracting full teinds from the nobles, who were all-powerful. The King also paid a teind of sums paid to him as superior in cases of ward, relief, and escheats. This investigation of payments due by King David II to the Bishop of Aberdeen dragged on until 1342, when authority was given by the King at Kildrummy Castle, in presence of Robert de Keith, Marischal of Scotland, to collect all arrears due, and next year the Bishop was given permission to seize lands where his dues had not been paid. The important thing for us is to show the complications and the difficulties of these dealings in teinds.

Men in very high positions did not scruple to take a tack of teinds. Alan,[1] Justiciary to the King of Scotland, in 1247 paid annually to Peter, Bishop of Aberdeen, the sum of 22*s.* for the teinds of the parish of Kincardine O'Neil, which King David had granted to the cathedral, and whose teinds the bishops collected. Alan and his heirs collected the teinds with the obligation of this small payment to the Bishop.

Amid all these dealings the parish had less and less of the teind for its own uses, and the poor vicar, if there was one, had a very meagre living. In 1257 we read of an inquiry held at Banchory regarding the payment of a suitable portion or salary to the vicar. Bishop Peter de Ramsay persuaded the Pope to fix each vicar's salary at 15 merks.[2] The Abbot of

[1] *Reg. Epis. Aber.*, vol. i, p. 17.

[2] Ibid., p. 18 et seq.

Arbroath, being a large and powerful teind-holder, appealed to the Pope, and the Pope ordered the Treasurer of Elgin and John, Canon of Dunkeld, to hold an inquiry and make a settlement. Pope Alexander issued a bull in 1257 with extreme tact, rubbing down both parties as best he could.

'Having God before our eyes and with the advice of wise men skilled in the law, we have agreed to assess for the vicar a definite fixed amount in these same churches, and from the revenues of the same, by the sworn word of the individual vicars and of other men worthy of confidence, we have assigned suitable salaries to the vicars of the individual churches, namely, to the vicarage church of Banchory Ternan, assessed at sixteen merks, the whole altarage with one acre of land and a teind of the sheaves of the said township off the lands then under cultivation, except forty pence to be collected every year for the church fabric of Arbroath by the hand of the vicar, the teinds and the sheaves of the said township that might be grown in addition afterwards with the lands pertaining to the church and the other teinds of sheaves of the whole parish going wholly and forever to the aforesaid Abbot and Monastery of Arbroath.'

Other churches with vicars—Banff, Gamrie, Fyvie, Bethelnie, Tarves, Forgue, &c.—were regulated in a similar way. At Banff fish, both white and red, were teinded. In some cases there was a manse.

'And let it be known that all the aforesaid vicars of the aforesaid churches shall bear all the ordinary burdens and shall be responsible for all time for the fabric of the chancels of their churches [a burden that fell regularly upon the parish rector], and for extraordinary burdens in return for their portions. In testimony of which we have thought the present document worthy to be confirmed with the weight of our seal. May it be wholly illegal therefore for any man to break this page of our agreement or with rash boldness to contradict it. But if any man shall presume to attempt to do so, let him know that he will incur the indignation of Almighty God and of the Blessed Saints, Peter and Paul, His Apostles; given at Lateran on the fifth day before the Ides of January in the third year of our Pontificate.'

After the War of Independence and the Battle of Bannock-

burn [1] Bishop Henry of Aberdeen gave a parish with all its income to the Monastery of Coupar for the rebuilding of the same which had been frequently and seriously damaged amid the many trials of war, on the condition that the Abbot provided a vicar with a salary of ten pounds and a croft and manse for the parish, with pasture lands for the vicar.

We even find in 1345 that St. Nicholas Church of Aberdeen, which belonged to the Cathedral of St. Machar, had no vicar, but a Bishop William in that year provided for a vicar in the following terms:

'Granted that by common law and by statute of the Church of Scotland from of old, it has been ordained and the law observed in most places so far in accordance with the approved custom, that each parish church should have its own rector or a regular vicar residing in the place, by whose care and discretion the cure of souls may be diligently exercised, and divine service conducted in the church in a seemly fashion, yet for the parish church of the town of Aberdeen whose fruits and offerings are known to belong wholly to our table, no provision of service by means of a regular vicar has so far been made. We therefore, admitting that the fruits and offerings of the ecclesiastical benefice are worth collecting, yet the great difficulty is known to be for a non-resident priest to do justice to this charge especially in a place where such a large population resides and gathers, inspired by God we ordain, with the consent and assent of our whole chapter, and we confirm by our usual authority that in the aforesaid church a regular vicar shall reside who shall draw ten merks sterling annually at Christmas and the day of St. John, in equal halves.'

Further examples of the misuse of Church property in the Middle Ages are not required. Things went from bad to worse until in the sixteenth century a Reformation became inevitable. In 1534 there was founded the Society of Jesus, the Jesuits, by Ignatius de Loyola, whose object was to reform the Church from within, to safeguard the Roman Church from an external Reformation, and above all to convert heretics and uphold the Pope. This Society set to

[1] *Reg. Epis. Aber.*, vol. i, p. 41.

work all over Europe, and in Scotland the Council of the Church attempted to reform itself. The statutes of the Council in 1549 reveal the evils of the Church as confessed by the priests themselves in Council. At Edinburgh the Council [1] tabulated the evils to be repressed, along with its proposed reforms, as follows: to repress heresies, to build up Christ's Church, to preach the Word of God to the people, to put down false preachers, to compel rectors of parishes to preach to their people at least four times a year, to suppress plurality of benefices, to execute wills faithfully, and to mend the life and habits of the clergy. The enemies of the Church were described as follows: those who condemn the sacrament and the ceremonies of baptism, confirmation, and extreme unction, those who deny the immortality of the soul, those who deny purgatory, those who despise Church censure, those who do not keep the fasts, those who distribute unholy books or use, sell, print or read the same, those who destroy images in churches, those who refuse to pray to the saints, &c.

From outside the Church the reforming Lords and Barons submitted to the clergy through the Queen Regent in 1558 [2] the following articles of reform; in these we see the evils of the Church as viewed by laymen: (1) Notwithstanding the decisions of diverse recent provincial councils concerning the reforming of the lives of the clergy, nevertheless there has followed little or no improvement of them as yet. (2) The clergy should provide preaching in every parish church every Sunday and every holy day. (3) All preachers should be examined regarding their doctrines and profession. (4) That all new curates and vicars be properly qualified. (5) That the sacraments be explained in the native language because the people are in awful ignorance. (6) Common prayers in the native tongue should be said every Sunday. (7) The people should no longer be compelled to make offerings to the church but allowed to give of their own free will. (8) In cases where the rectors and vicars had not enough to live on from the

[1] *S.E.S.* vol. ii, p. 95 et seq. [2] Ibid., p. 146.

dues of the church, the bishop of each diocese should see that those uplifting the revenues of the Church make proper provision for the clergy. (9) No one should burn, rob, or destroy churches, chapels, or religious buildings, and ornaments thereof, and that no changes should be made unless with the authority of both Church and State.

The last Council of the Roman Church in Scotland was summoned by the Archbishop of St. Andrews on 1 March 1558[1] 'for a cultivating of God's field which will uproot the thorns of heresies, errors, and schisms, correct manners and excesses, reform what is unseemly, and bring the vineyards of the Lord to fruit of a richer quality, and to end the quarrels and the controversies that are rending the Church'. This meeting was held in the Monastery of the Dominican Friars in Edinburgh and it lasted from 1 March 1558 to 10 April 1559, by which time it was impossible to stop the Reformation movement. The clergy at this final meeting did really reach the greatest evils of their Church, but it was too late. Nevertheless the decisions of this last Council are very interesting:

1. Clergy high and low must put away their concubines.
2. The offspring of the concubines must not stay more than four days in three months with the clergy, under a penalty of £200 for the Archbishop, £100 for a Bishop or prelate, &c.
3. Sons of priests must not be promoted to the posts of their fathers, and the Queen should be asked to beg the Pope to give no dispensations for such cases.
4. No prelates or Bishops must give their daughters in marriage to Barons or Lairds with dowries from the patrimony of the Church; fines in such cases should be as much as the dowry promised; nor should Churchmen make their sons Barons or Lairds of lands, nor assign nor alienate in any way Church lands or any part of benefices or teinds to their children or their concubines. [Bishop Gordon of Aberdeen, a son of the Marquis of Huntly, and not really a Churchman at all, gave away extensive lands, entrusted to him as Bishop, to his concubines and their children.]

[1] *S.E.S.*, vol. ii, p. 151 et seq.

5. No priest of any rank should keep in his establishment anyone suspected of heresy.
6. No priest should be a trader in fish, salt, butter, wool, food, or anything else.
7. The clergy should wear correct dress.
8. The priests should recite daily the canonical hours and other divine services. They should say Mass frequently, at least on Sundays and Fast days.
9. Bishops, or suitable deputies, should visit the monasteries within their diocese according to the decree of the Council of Trent, and they should reform these places morally; they should see that dilapidated buildings are rebuilt and that the revenues of monasteries and convents are duly received by the proper parties.
10. All churches should be repaired and rebuilt in walls, roof, and decorations; the rectors who hold the livings should be warned to repair the chancel, which is their duty by law; the parishioners should do their part repairing the naves and the walls of the cemetery; all destroyers and burners of church buildings and images should be brought to account; no trees in cemeteries should be cut unless with the consent of the Bishop, Rector, Vicar, and parishioners of the church; those guilty of cutting trees should be called before the Bishop, pay the cost of the trees, and a fine. If any trees fall through old age, or for any other reason, they should be disposed of for the good of the church fabric.
11. All persons holding Church benefices should be in Holy Orders; a man holding several benefices must show his permission for so doing to the Bishop, and none should live off the altar who are unworthy to serve the altar. This is a return to the precept of the early Christian Church, *ne de altari vivant, qui altari deservire dedignantur.*
12. Vicars should have at least twenty merks Scots money with a manse and garden as decreed by Council for the Dioceses of Aberdeen, Moray, Ross, Caithness, and Orkney. Elsewhere the salary should be twenty-four merks with a manse and garden, *et solitis et consuetis.*
13. Vicars with a salary should reside in their parish.
14. All fines inflicted upon priests should go to the church and not to laymen whose help had been invoked.
15. Bishops should visit priests frequently, preach more than four times a year, and correct all the evils they see.

16. All Rectors must preach more than four times a year; young boys holding benefices and unfit to preach should go to school, and other suitable preachers supplied at their expense. Rectors of fifty years of age who have never been accustomed to preach should find suitable preachers and themselves be present to give honour to the service. All holding benefices must see that the Word of God is preached in their churches by preachers approved by the Bishops. If this was not being done by 1st August then the Bishop should draw one-fourth of the fruits of the benefice, which he should use partly to supply preachers and partly for other pious uses.
17. The Bishop should examine all preachers in doctrine and the Articles of Faith.
18. The people should be exhorted about the sacraments.
19. Priests should be made to go to the Universities.
20. No one should be given a benefice if found unsuitable on examination by the Bishop in age, morals, or doctrine; the Queen should see that none should be promoted to a benefice but that all be duly qualified for the honour of God and the edification of the people; the Pope should be written to, to act accordingly.
21. The evils committed by executors of estates should end.
22. Charges for funerals should be in accordance with the means of the dead person.
23. No priest of any rank, from the Archbishop downwards, should give away Church lands in feu or 'emphyteusis' or assedation, long or short, unless to those holding and cultivating the same; any one breaking this rule should be fined one-third of the rent of such lands, which fine should be levied by his superior and given to pious uses.
24. There was a statute passed concerning teinds in favour of poor farmers or settlers to the effect that teind-sheaves which were then in the hands or at the free disposal of Archbishop, Bishop, Prelate, &c., should be collected by the Church priests themselves for their own uses, or should be let or given in assedation to the colonists themselves or cultivators of the ground. But if the malice of these same colonists were a hindrance, they, refusing to pay by way of teinds of this kind to Churchmen the accustomed rents, and at least those accustomed to be paid in the previous ten years, should give sufficient caution for payment to be made. But if the colonists

themselves or the occupiers of the land refused to pay such teind, and if the teinds were let to others, then the leasing of this kind should be for three years only. But Churchmen holding the right to lease out teinds were expected by all means possible to lease directly to the colonists themselves or the occupiers of the lands the other teinds which had been in the hands of others for a long or short time, either by letters of assedation or by tolerance. But if they could not effect this, at least, using all their wits, they should try to enter into such condition of leasing in the case of all teinds of this kind to be let anew, namely, that such teinds should be let at a moderate price or value to colonists or farmers according to the rent of their holding, *juxta ratam occupationis eorumdem*, so that no scandal or murmur should arise on such occasions against the Churchmen. The conscience of each priest should be weighted with the observance of this edict, for which they should be held accountable on the Day of Judgment. This decree was to last for five years at least.

25. At Easter no exactions should be made of offerings or of small teinds by the priest to the scandal of the Church, but only spontaneous offerings should be accepted.

Whilst the Church endeavoured at the eleventh hour to reform itself, the poor, of which there was a very large number in Scotland at this time, at the break-up of the Feudal System appealed and clamoured for their share of the teinds which had been appropriated by monks and bishops and the regular clergy generally. There was affixed to the gates of monasteries the famous *Beggars' Summons* to the monks to give up their possessions to the poor: [1]

'The first of Januarie, 1559, but according to the old accompt, 1558, this warning to the friers which followeth was divulgate:—

'The blind, crooked, lame, wedowes, orphans, and all other poore visited by the hand of God, as may not worke, to the flockes of all friers within this realme, we wish restitution of wrongs past, and reformation in times cumming for salutation.

'Ye yourselves are not ignorant, and though yee would be, it is now (thanks be to God) knowne to all the world by his most infallible Word, that the benignitie or almes of Christian people,

[1] Cormack, *Poor Relief in Scotland*, p. 29, 1923.

perteaneth to us alone, which yee, being whole of bodie, strong, sturdie, and able to worke, what under pretence of povertie, and nevertheless possessing most easilie all abundance, what through clocked and hiden simplicitie, though your pride is knowne, and what through fained holinesses, which now is declared superstitioun and idolatrie, have these manie years, expresslie against God's Word, and the practise of His holie apostles, (to our great torment, alas!) most falselie stollin from us. And as yee have, by your false doctrine and wresting of God's Word, learned of your father Satan, induced the whole people, high and low into your sure hope and beliefe, that to clothe, feed, and nourishe you, is the onlie most acceptable almes allowed before God, and to give a pennie or a piece of bread once in a weeke is enough for us; so have yee perswaded them to build you great hospitalls, and to mainteane you therein by their force, which onlie perteaneth now to us by all law, as builded and givin to the poore, of whose number yee are not, nor can be reputed, neither by the law of God, nor yitt by no other law proceeding of nature, reasoun, or civill policie. Wherefore, seeing our number is so great, so indigent, and so heavilie oppressed by your false meanes, that none taketh care of our miserie, and that it is better to provide for these our impotent members which God hath given us, to oppone to you in plaine controversie, then to see you heerafter, as yee have done before, steale from us our loodging, and ourselves in the meane time to perishe, and dee for want of the same; we have thought good, therefore, ere we enter in conflict with you, to warne you in the name of the great God by this publick writting affixed on your gates where yee now dwell, that yee remove furth of our said hospitalls, betwixt this and the feast of Witsonday nixt, so that we, the onlie lawfull proprietors thereof, may enter thereto, and afterward injoy the commoditeis of the church which ye have heertofore wrongfullie holdin from us; certifeing you, if yee faile, we will at the said terme, in whole number, and with the helpe of God, and assistance of his sancts on earth, of whose readie support we doubt not, enter, and take possession of our said patrimonie, and eject you utterlie furth of the same.

'Let him, therefore, that before hath stollin, steale no more; but rather lett him worke with his hands, that he may be helpfull to the poore.'

'From all citeis, touns, and villages of Scotland, the first of Januarie.'

Whilst this *Beggars' Summons* reveals how the lower classes gradually came to storm the clergy from their buildings and possessions, pillaging and destroying wantonly all over the land, we cannot blame the clergy for the plague of vagrants in the sixteenth century. These bands of vagrants were found all over Europe, and the causes were much the same in all countries. There was manifestly lack of employment. The age was a time of transition, and old occupations were becoming unnecessary. Under the Feudal System it was war and service with nobles in their feuds that had occupied most of the male population. Now the central government was becoming strong enough to keep the unruly barons in subjection, and their retainers were thrown idle. Their training in war and foray made them restless and unsettled, and they became the sturdy beggars of the sixteenth century, who, in the name of the Reformed Religion, committed such wanton destruction upon certain churches, manses, abbeys, &c., of the old order.

The monasteries, nunneries, and chapters of cathedrals had served two great purposes in the Middle Ages: (1) as religious seminaries, and (2) as centres of civilization in a wild country. That was why David the First and his successors endowed these institutions so handsomely. Scotland was to be brought under the plough and the monks were settled, to show the example. Kelso Abbey, controlling over forty parishes, is shown by its records to have been a huge centre of agricultural exploitation. The King led the way for the Baron and gave the example of handing over parish churches to monasteries; the abbey was considered best able to provide a trained priest for each parish, as well as both example and teaching in agriculture. Undoubtedly the Abbey could better supply a suitable priest than the lay patron of a parish. [Lay patronage was restored in 1712, and finally abolished in 1874.] If then an abbey did its duty to a parish entrusted to it, it had a right to some share of the teind revenue of that parish, always provided that a competent portion was assigned to

each resident vicar. By a fiction in law the abbey and the canons were the rector of the parish. At the Reformation about 260 parishes out of nearly 1,000 in Scotland still drew their own teind revenues as independent parsonages under independent patrons. The other 700 parishes had been annexed to monasteries, cathedrals, &c.[1] The Act of Parliament of 1587 declared that monasteries as institutions were no longer necessary. They had served their purpose in their day, and in their state of corruption could be dispensed with. The Church lands passed to the lay barons, who became the exponents of agriculture, and thus, if the early kings and barons had meant some part of the Church revenues to go to the development of agriculture, there was at least some continuity of this endowment after the Reformation; for the heritors, notably in the eighteenth century, did give themselves to the development of their lands before the establishment by the central government of a Board of Agriculture at the end of the eighteenth century. True, the Reformed Church did try after the Reformation to secure all the wealth of the Old Church, but failed. It did secure a small portion of the teinds but none of the lands, yet although miserably sustained from the teinds, many ministers of the New Church had the intellect and found time to experiment with modern agricultural methods within their parishes, and many of the surveys of agriculture, ordered to be made by the Board of Agriculture before and after 1800, were written by distinguished parish ministers. The Church lands went to the Barons, and the bulk of the old castles in Scotland date from this post-Reformation period, built with money or properties which the lairds secured to themselves from the possessions of the Roman Catholic Church, monies which John Knox tried in vain to secure for the Reformed Church and for his schemes of education and social reform in Scotland. The Reformation storm swept away rectors and vicars and monks, and a wonderful chaos remained of churches and

[1] *Register of Privy Council, Sec. Series*, vol. i, p. cxiii.

Church land, of teinds and dues, which nobody was willing to pay and everybody was eager to grasp—a state of matters which required much physical and moral courage for a court of justice to deal with, and more than the justice of Scotland possessed at the time.

At this period (1551-52) Estienne Perlin, a French ecclesiastic in Scotland, described the country as follows:[1]

'The richest man in Scotland, at the time that I was there, was the Archbishop of St. Andrews [i.e. John Hamilton, natural son of James, first Earl of Arran]. (Page 76.)

'In this place there are many churches highly ornamented, and plenty of monasteries, in which there are plenty of religious; and it is to be noted, that the ecclesiastics are richer than the housekeepers or nobles.' (Page 79.)

'There is much bad and wild uncultivated land.' (Page 73.)

Obviously the best of the land belonged to the wealthy ecclesiastics, and at the Reformation the needy nobles were only too eager to lay hold upon the possessions of the Church. The life powers of the Medieval Church in Scotland had become exhausted, even more notably than those of the Celtic Church, which some centuries before it had superseded. Decay and corruption had set in, and by the immorality of its priesthood and the ignorance of its laity, it had sunk almost to the lowest level among the degenerate churches of the age in Europe. For a time it was able to silence, banish, or put to death the preachers of the Reformation, but it failed to furnish others to take their place and to instruct the long-neglected people. It could not reform the lives of its own clergy, even of those in highest places, and make of them examples to their flocks in all holy conversation and godliness. And so it had to give place to a new order of things.

[1] Hume Brown, *Early Travellers in Scotland*, p. 71 et seq., Edinburgh, 1891.

CHAPTER VI

# ATTEMPTS TO REGULARIZE TEINDS DURING THE REFORMATION

IN August 1560 the Scottish Parliament met and decided to discontinue the Roman Catholic religion and the papal jurisdiction in Scotland, and to recognize only those preaching parochial clergymen who professed the doctrines of the Reformation. Now the keenest of the Reformers wanted to acquire all the property of the Church, to enable them to settle ministers in all parishes and to carry out educational and Poor Law reform as outlined in the *First Book of Discipline*. But the old clergy were not immediately disendowed. The nobles and the Court assumed that the benefices of the clergy fell to the Crown as lapsed fiefs; and accordingly, before and after 1560, the nobles were busy acquiring Church lands around them *in commendam*, i.e. in trust, or under the device of a tulchan system of appointment to benefices. This device was the appointment of a clergyman to a bishopric, abbacy, or other benefice, under a previous bargain with a powerful lay grantee or patron, namely, that the clergyman was to retain only a fixed allowance, generally very moderate, out of the fruits of the benefice, and pay over the greater proportion of the revenues to the powerful layman. A tulchan was really a stuffed calf placed beside a cow to make the cow give up her milk to those who were going to enjoy it. However, this method of outwitting the law was soon abandoned, as the Crown's right to benefices was openly avowed and acted upon by James the Sixth when he came to full power. The great benefices were in time converted into temporal lordships, and the new lords acquired not only the lands of the Church but also the teinds belonging to the religious houses. They became titular abbots, priors, parsons, &c., of the benefices. They held their right to the teinds with the old burden of providing public worship in the parish

church by paying a salary to the minister to serve. Again and again, the Reformed Church claimed the whole property of the Roman Church, but the nobles were too greedy and too powerful, and treated the claims of the Reformers as devout imaginings. The Reformers proposed to use the Church revenues to support their ministers, to relieve the poor, to provide education, and to maintain the church fabrics. In December 1561 the Estates met around Queen Mary and considered an offer from the disestablished Bishops of St. Andrews, Dunkeld, Moray and Ross, who were really speaking on behalf of the Roman clergy, and who offered to give to the Crown one-fourth of their revenues if the other three-fourths were guaranteed to them in sure possession. Returns of all revenues were asked from the old clergy and estimates of requirements from the new. But before these were available the Council, with the powerful Roman Catholic Earl of Huntly in the chair, decided that the Crown and the Protestant clergy would share one-third of the revenues and that the old possessors would retain two-thirds in life rent. The same Act [1] gave powers to the Crown to dispose of any Friars' houses as yet standing undemolished by the Protestants to the magistrates of burghs for hospital or school purposes. Thus, Aberdeen used Greyfriars Monastery as a hospital, and the Earl Marischal disposed of the three other monasteries in Aberdeen for the benefit of his new Marischal College, a Protestant University intended to be a rival to the Roman Catholic King's College. Knox characterized this arrangement of the Thirds of Benefices as one-third to God and the Devil and two-thirds to the Devil.

The bishops and priors retained during their lifetime their courtesy titles, and as they gradually died off their lands and revenues fell to the Crown. The Crown then appointed some nobleman, usually of the locality, as a lay commendator of the Church estate, and this nobleman appointed some humble clergyman as tulchan bishop. The great defect of the post

[1] *A.P.S.*, vol. iii, p. 24.

of commendator was that it was not heritable, and so in 1587, when the King came of age, Parliament passed an Act[1] for the annexation of the temporalities of benefices to the Crown. Whilst the King asserted his superiority over these Church benefices, the nobles were now able to get from him legal lordship over lands held so far *in commendam*. The chief clauses of this Act were:

1. All kirk lands erected into temporal lordships remained with those who had infeftments of them. For example, the lands of the Abbey of Deer to Robert Keith, commendator, later Lord Altrie; of Paisley Abbey to Lord Claud Hamilton, later Lord Paisley, and so on.
2. All portions of lands of Dunfermline and Holyrood not dealt with in section 1 and the lands of Arbroath were reserved for Lord John Hamilton.
3. The teinds were excepted from this annexation and their disposal was not definitely settled.
4. The castles, yards, and mansions of the prelates and the manses and glebes of the parsons were not annexed.
5. Church lands already given to colleges, grammar schools, hospitals and poor-houses were not annexed.
6. All rights of lay patronage were left untouched.
7. All pensions and infeftments already granted out of the Church lands were left unannexed.
8. The temporalities of Kelso, Coldingham, and Lesmahagow were not annexed, and the commendator was Francis Stewart, Earl Bothwell, a very unruly subject.

Be it noted in passing that it was through this system of commendators that many powerful Scottish families acquired or increased their lands—Stewarts, Hamiltons, Douglases, Erskines, Kers, Keiths, Leslies, Setons, Maitlands, Homes, Bruces, Grahams, Campbells, Gordons, &c. Some of these became Earls like Gowrie, and most of them Barons. All were glad to cease to be merely commendators, for they were afraid lest the Roman Church might some day return to take away the lands. Hence the zeal of these non-clerical aristocratic Protestants. The Bishops' palaces, &c., had never been

[1] *A.P.S.*, vol. iii, p. 433.

disposed of, and when King James felt himself firmly established he re-instated bishops in Scotland in 1606. In 1605 he had banished six ministers and imprisoned twenty-four for attempting to hold a General Assembly in Aberdeen without his permission, and so in 1606 the Red Parliament of Perth passed an Act declaring that the ancient Scottish Polity of the Three Estates had been impaired by the abolishing of bishoprics and by the poverty of the remaining titular bishops. Accordingly the bishops' lands were extricated from the Annexation Act of 1587. James brought three prelates to London to be consecrated by English Bishops, and to carry back the virtue to their fellows. He did what he could to endow the bishops with any remaining Abbey or Priory lands in Scotland. The Abbacy of Fearn was annexed to the Bishopric of Ross and the Priory of Monymusk to the Bishopric of Dunblane. In this way all the bishops in Scotland were fairly well endowed before James died in 1625, and all attended Parliament. Archbishops ranked before Earls, and Bishops before the other nobles. The clergy, as one of the Estates of Parliament, had disappeared at the Reformation. The laymen holding benefices went to Parliament to represent the clergy. When episcopacy was re-established in 1606 the bishops alone formed the clerical Estate. The rest of the Abbey and Priory lands passed gradually into heritable temporal lordships in the hands of the King's favourites. The names most favoured by the King at this time were of those Scotsmen who had followed the King to England, e.g. George Home, Earl of Dunbar; John Murray, Earl of Tullibardine; Robert Maxwell, Earl of Nithsdale; and Colin Mackenzie, Earl of Seaforth. (For full particulars one should consult the list of Abbey lands and their disposal compiled by Mr. Maitland Thomson of the Register House, Edinburgh, page 164, *Register of the Privy Council of Scotland*, vol. i, 1625–7.) This property, relatively very large in a poor country like Scotland, consisted of thirty abbeys, twenty-seven priories, fourteen nunneries, six monasteries of Red

Friars, fourteen houses of Red Friars, seventeen houses of Grey Friars, and nine houses of Carmelites or White Friars. Then there were thirty hospitals, and it is computed by Maitland Thomson that there were at the Reformation one hundred and fifty religious houses all possessing extensive mortified lands and endowments. As for the secular clergy, there were two archbishops and eleven bishops with lands and houses; each bishop had invariably several seats in the country; for example, the Bishop of Aberdeen had houses at Bishop's Loch, at Bishopston near Blackburn, and Fetter- near by Kemnay. Then the deans and chapters jointly with the Bishop possessed extensive lands. Large churches in big centres, heavily endowed with stipends for innumerable priests, possessed extensive lands; for example, St. Giles in Edinburgh, St. Nicholas in Aberdeen, and the Chapel Royal of Stirling. Then there were nearly one thousand parishes with manses and glebes for the local priests.

It has been estimated by Sir George Mackenzie that the Church from its own lands and from teinds gathered in annually one-half of the total income from land in Scotland. Hence it was that, when the Estates in Parliament imposed a sum as taxation, one-half was imposed upon the Church and the other was borne in various proportions by the nobility, the smaller barons or lairds, and the burghs.[1]

The bishops and abbots tended always to become wealthier, and if one of these died another Church dignitary held the post for a time *in commendam*. This temporary plurality of livings tended to become the rule; for example, the Bishop of Orkney held also the Abbacy of Kinloss and Priory of Beauly from 1540 to 1558. From 1535 the Bishop of Moray was Abbot of Scone, and so on. But what was more to be deprecated, appointments *in commendam* were made of laymen of powerful noble families. For example, in 1538, at the age of five, Lord James Stewart, a natural son of King James

[1] *Register of the Privy Council of Scotland*, vol. i, New Series, p. 112. In 1682 Sir George Mackenzie founded the Advocates Library, Edinburgh.

the Fifth, became prior of St. Andrews. Later he was Earl of Moray and Regent Moray. His brother, Lord John, was prior at Coldingham, and Lord Robert was Abbot of Holyrood from his infancy in 1539. The last Roman Catholic Bishop of Aberdeen was a son of the house of Huntly, ever doughty champions of Roman Catholicism. This bishop transferred much of his episcopal land and of the land of St. Peter's Hospital, Aberdeen, to children of his concubines. The Dean and Chapter of Aberdeen were bold enough to ask this bishop, William Gordon, to show the example and send away his gentlewoman, since they could not be expected to accept correction from one who could not correct himself.[1]

Such were the benefices then in 1561, when a portion of one-third of the revenues was assigned by Queen Mary for the maintenance of the reformed clergy. The Reformed Church had been running for eighteen months without any help from the State. Hence the Act began by saying that the ministers had long been defrauded of their stipends, and were suffering poverty.

'Because the ministers have long been defrauded of their stipends, so that they are becoming in great poverty, and necessity; and notwithstanding this, have continued in their vocation without payment of their stipends for a long time. Whereby they are, and shall be constrained to leave their vocation, unless a remedy be provided. Therefore our Sovereign Lord, with advice of my Lord Regent, and Three Estates of this present parliament, has statute and ordained that the whole thirds of the whole benefices of this realm shall now instantly and in all times to come, first be paid to the ministers of the Gospel of Jesus Christ and their successors, and ordains the Lords of the Session to grant, and give letters charging all and sundry intromitters, or that are in arrears in payment of the same, to answer and obey the said ministers and their collectors to be nominated by the said ministers, with advice of my Lord Regent, in form as is necessary, notwithstanding any discharge given by my Sovereign Lord's mother to whatever person or persons of the said thirds, or any part thereof, *aye and till the Kirk come to the full possession of their*

[1] Cormack, *Poor Relief in Scotland*, p. 14.

*proper patrimony, which is the Teinds.* Providing always that the collectors of the said ministers make an account yearly to the Exchequer of their intromission. So that the ministers may be first assured of their Stipends, pertaining to every one of them; And the rest and superplus to be applied to our Sovereign Lord's use'.[1]

The proportion of the Thirds assigned to the Protestant clergy in 1562 for the first year of their services was £24,231 17*s.* 7*d.* Scots—about £2,000 sterling—a very small sum for the purpose. The expenses of collection had been heavy; there were false returns on the part of old possessors, and possibly collusion between them and the collectors. Allowances to ministers were wretchedly low, and it is no wonder that the Church never ceased to cry out and claim its true possessions, the teinds.

Now we return to the fate of the teinds. In 1560 the Reformed Church started with eight ministers in Leith, Dundee, Aberdeen, Perth, St. Andrews, Dunfermline, and Jedburgh, with John Knox himself in Edinburgh. There were five superintendents or roving ministers supervising a number of readers and exhorters and settling these gradually in parishes. Many of these like Adam Heriott, first minister of Aberdeen, were monks or priests who had renounced Popery and had been approved for service in the Reformed Church. In the *First Book of Discipline* Knox stipulated that each minister should have with a manse and a glebe and at least six acres a stipend of forty bolls of meal, twenty-six bolls of malt, with money to buy other provisions, and this to be a minimum. Each roving superintendent was allowed about four times that amount. Exhorters were to have a hundred merks and readers forty merks, and in addition these would earn a little by teaching. When each parish had a fully qualified minister, then the thousand odd parishes would require about six hundred thousand merks in total stipend. Where was Knox to find the money? From the rents and

[1] *A.P.S.*, vol. iii, p. 24, 'Anent thriddis of benefices' (spelling modernized).

patrimony of the Roman Church. The ministers, the poor, and the schools were to be sustained by the Church, and provision had to be made for them. Knox made no mention of the *lands* of the Roman Church, believing doubtless that it would be impossible to oust the nobles from these, but the *First Book of Discipline* claimed the teinds and the whole teinds. Sums sufficient to sustain these forenamed persons had to be drawn from the teinds of corn, hay, hemp, lint, fish, calves, foals, lambs, wool, cheese—from all teinds large and small. Moreover, these teinds were to be used within the parish in accordance with the old formula, *decimae debentur parocho*. Further, an end would be made of the bitter and harsh exaction of teinds by the lower tacksmen—a foretaste of the charity of the new religion.[1] A rude awakening awaited the Reformed clergy from this pleasant financial dream. This Ordinance of the Queen's Council in 1561, and again in 1562, decreed that all parts of the benefices of the Roman Church, rents, teinds, cains, mails, &c., should be valued annually by State officers. Two-thirds were granted to the old possessors in life rent and one-third was divided between the Crown and the Kirk, at the discretion of the Government, and the stipends of ministers and readers were likewise to be made at the discretion of the Government. This Ordinance,[2] with small modifications, remained in operation for the next half century, until 1617, when a stipend to each minister was allocated from the teinds of each minister's parish instead of from the Thirds of Benefices. The annual allotment by the Act of 1561 was disappointing, and the share of the third provided a very small stipend. The growth of the Reformed Church was due to its own efforts and to the liberality of the people. On the death of a Roman Catholic vicar titular of teinds, the benefice was grabbed by some one else; it never went to the new parish minister. And in the troublous times

[1] John Knox, *Works*, vol. ii, p. 221. Bannatyne Club, Edinburgh. 'Sext Heid. Of the Rentis and Patrimony of the Kirk. Pure brethren, the lauboraris and manuraris of the ground' not to be oppressed.

[2] *A.P.S.*, vol. iii, p. 24, 'Anent thriddis of Benefices'.

of the Regencies of Lennox and Mar there was no opportunity to pass further ecclesiastical legislation. Andrew Melville's *Second Book of Discipline* once more boldly claimed, not merely all teinds, but the whole patrimony of the Roman Church, and the final answer to this was King James's famous Annexation Act of 1587, by which all the Roman Church lands were reclaimed to the Crown and removed for ever beyond the reach of the Reformed Church. But the teinds were untouched by this Act except those teinds which could not be distinguished from rents *cum decimis inclusis*. But how could the Reformed Church get them? The teinds of most of the parishes had been long in the hands of abbots, priors or bishops, who had sold them or let them to tacksmen, a motley crowd of titulars of the teinds, who dealt in them as the Romans farmed out areas of taxation. Teinds were a negotiable commodity for buying, selling or leasing or granting as security for a loan. The leading of the teinds by tacksmen and sub-tacksmen had become an annual scramble and uproar with resulting raids and bloodshed. It was too complicated a problem for any Government of these unsettled times to tackle. Stable government and peace of some duration are necessary for social reform. Well do we realize that to-day. In 1596 John Lindsay of Balcarres, Lord of Session and lay titular of the parsonage of Menmuir in Forfarshire, did draft a Bill to guarantee a fixed stipend from the teinds to each parish minister in Scotland. By this time King James was gaining power with years, and was anxious to restore episcopacy in Scotland, and so the Bill was dropped.

We are not astonished to find that the teind-holders experienced increased difficulty at this stern time of Reformation in collecting their teind-sheaves. The Bishop of Moray gladly let his teind rights to persons physically able to enforce payment. Here is an example in 1570:

'Assedatioun be the Bishope with consent of the cheptour, of the teynd schaeffis of the kirk and personage of David, set, for divers causis and chefely for in-bringing the teynd silver furth

of the pernicious parochinaris hands, to Johne Ros burges of Invernes and Margaret Vaus his spouse for nyntene yeiris; pay and thairfor £32 6 8 yeirlie, defalking £3 6 8 yeirlie for gratitude and fee of the inbringing of the remanent of the teynd silver of the said personage and paroche extending to £29.'[1]

Such entries in the chartularies at this period are very common.

In the same way the Earl of Gowrie received the assistance of an Act of Parliament compelling payment to himself in 1581 of the teind penny of all casualties and profits of court in the Sheriffdom of Perth, which dues had previously been paid to the Abbey of Scone.[2]

Nor must we imagine that in 1560 there was a complete change in the outlying parts of Scotland from the Roman Catholic faith to the new creed of the Reformers. For example, in the records of Invercauld [3] we note that James Hope, Priest of the Parish of Coldstone, gave a lease of the teinds to John Forbes, the Laird, on 6 July 1500, i.e. before the Reformation. The Parish of Coldstone belonged to the Archbishop of St. Andrews. Again, after the Reformation in 1566,[3] a Roman Catholic priest of Coldstone gave a lease of the teinds for nineteen years to a new Laird, William Forbes. Again, in 1580,[3] James Duff, still a Roman Catholic priest at Coldstone, gave a tack of the teinds to the new Laird, Alexander Forbes. In 1632 the records of Invercauld [4] show that the teinds of the Lordship of Cardross were leased by the Earl of Cardross and his son to Thomas Erskine for the long period of twenty-one times nineteen years.

In far-distant St. Kilda in the period 1575–95 teind collecting went on as usual.

'Anes in the yeir ane Priest or Minister cummis to thame and baptizes all the bairnis born amangis thame sin his last being thair, and celebrattis marriage to the parteis desyrand, and makes sic uther ministration of the sacraments to thame as he thinkis

[1] *Reg. Epis. Morav.*, p. 422.
[2] *A.P.S.*, vol. iii, p. 265.
[3] *Records of Invercauld*, p. 49. New Spalding Club, 1901.
[4] Ibid., pp. 22, 57.

gude, and gifis thame sic directiounis as he wills thame to use and keip for ane yeir thaireftir, *and gadderis payment of thair teinds, quhilk thai pay maist thankfullie and justlie of ony people*, and departs quhill the next yeir agane. In auld times thai sustanit ane priest or clerk continuallie amangis thame to shaw and tell to thame the halie dayis to be keipit in the yeir.'[1]

## TEIND LEGISLATION 1560–1633.

Up to the Reformation we have little legislation for teinds in Scotland, the administration being established on use and wont; but in the turmoil of the Reformation, and with the increased power of the central authority of the King, we find after 1560 many Acts anent teinds. We shall deal with them in their chronological order, noting that Acts for the same purpose are repeated again and again, and that this seems to imply that such Acts were not being administered locally. The legislation of this period all bears this mark upon it. The laws for the relief of the poor, for example, are repeated again and again, simply because the local authorities were not able to administer them.

In 1567 an Act was passed that provision be made for the instruction of the youth, for the sustentation of the poor, and for some relief to the labourers of the ground, especially for relief in the leading of the teinds.[2] But the relief proposed is not defined. In 1578 it was enacted that no teinds should be payable by ministers for crops on their glebe and kirk lands up to the amount of four acres set aside for them by Act of Parliament.[3] At this time there were not enough ministers to supply all the parishes, over nine hundred, in Scotland, and this Act was made applicable to those readers who were acting for ministers until a supply of ministers was forthcoming. The figures recorded in 1567 were: 257 ordained ministers, 151 exhorters, and 455 readers. This Act was ratified in 1581. In 1579 an Act [4] was passed for relief of the

[1] Skene, *Celtic Scotland*, vol. iii, p. 432, Appendix. For the late Reformation of St. Kilda, see Alexander Buchan, *St. Kilda*, Edinburgh, 1727.

[2] *A.P.S.*, vol. iii, p. 37. [3] Ibid., p. 98. [4] Ibid., p. 139.

labourers of the ground troubled for want of timeous teinding of their corns.

'The King's Majesty and Three Estates of this present Parliament,[1] understanding the great harm and inconvenience sustained by the labourers of the ground within this realm through the default of the teinding of their corns in due time by the malice of such as have title or tacks of their said teinds, oft-times causing the said labourers of the ground, for default of teinding of their said corns in due time, to lose their corns or fall in the danger of spoliation—for remedy of which our said sovereign Lord with advice of his said Three Estates, statutes and ordains, that all persons having title or tacks to any teind-sheaves, and being in the habit of teinding, or intending anywise to lead the same, shall pass, or send and cause to be teinded the said corns always as the same is ready, within eight days after the shearing thereof, which if they delay to do at the expiring of the requisition underwritten, it shall be lawful for the owner of the said corns, to take two honest neighbours sworn in presence of distinguished (i.e. respectable) witnesses, and to teind his said corns, lead the stock therefrom, and place the teind stacked upon the ground, which the owner of the said corn shall be liable to keep undestroyed and uneaten by beasts till the first day of November thereafter, providing that he demand teinding of the party having title or right to the said teind-sheaves openly in the parish kirk upon three separate Sundays before noon after the shearing of the said corns, which order being duly and faithfully observed by the owner of the said corns, it shall be sufficient warrant and defence for him against all action for spoliation that may be pursued against him for intromission with the said corns, he teinding thankfully with the person having title or tack of the said teinds, and making no impediment to the teinding and leading thereof in highways, or upon any ground that is shorn.'

In 1587 [2] the above Act was ratified and ordered to be put into execution in all points with this addition—the labourer to demand teinding in the parish kirk on two Sundays only, after the shearing, provided that fourteen clear days elapse between the date of the first requisition and the teinding by the labourer.

[1] Spelling modernized.

[2] *A.P.S.*, vol. iii, p. 450.

Up to this time there had been a certain restriction in the length of tacks granted in teinds, but in 1606 all such restriction was made altogether null and of no avail, seeing that stipends were at this time assured from the Thirds of Benefices, and there was no need to fear the absolute non-payment of stipends. This Act gave full play to wealthy men to deal in tacks of teinds and sub-tacks, just as men deal to-day in stocks and shares.[1]

A new method of teinding was enacted in 1606: [2]

'It is statute and ordained by Our Sovereign Lord and Estates in parliament that in time coming in all teinding of corns that the same be teinded at three separate times every year if the owners of the corns shall think it expedient, to wit, the croft infield corn at one time, the bere at another time, and the outfield corn at the third time; and declares that fifteen days after the complete shearing of each kind of corn being outrun that it shall be lawful for the owners at the said fifteen days' end, to make requisition upon seven days to give them thankful teinding. And if the owners get not thankful teinding at the expiring of the said seven days, the said estates declare that it shall be lawful for the owners of the said corns to teind and stack the same themselves conform to the Act of Parliament made of before, anent teinding of corns in all points, and shall incur no danger therethrough.'

It is evident that difficulties had not all been removed by the above Act, for here is another Act of 1612.[3] It repeats the Act of 1606, that teinding was to be done at three times for the three sorts of grain. But it added that,

'eight days after the complete shearing of each sort of corn being outrun, it shall be lawful for the owners at the said eight days' end, to make requisition upon other eight days, to make them thankful teinding, and if the owners get not lawful teinding at the expiring of the said last eight days, the said estates declare that it shall be lawful for the owners of the said corns to teind and stack the same themselves, conform to the Act of Parliament made of before, anent the teinding of corns in all points, and shall incur no danger therethrough.'

[1] *A.P.S.*, vol. iv, p. 325.
[2] Ibid., p. 286; spelling modernized.
[3] Ibid., p. 471.

It is to be noted that with each successive Act the period of waiting for the teind-holder to come and take his teinds is being steadily reduced. One can readily understand, with a climate such as ours, the great inconvenience and loss of having to wait, perhaps in excellent harvesting weather, until a distant teind-holder should come and take away his share. Here is a further Act in 1617.[1] It refers to the previous Acts on the subject, and notably to the Acts of 1606 and of 1612 anent the three times of teinding. Then it adds—but for the greater weal and ease of His Majesty's lieges—finding it requisite that the former Acts be altered in the points following, for settling of a clear and certain order to be hereafter observed in all teinding of corns.

Heritors and labourers, eight days after complete shearing of each sort of corns, to request owner of teind (if resident) or his factor or land steward, upon four days' warning, to come and make thankful teinding—whom failing heritors and labourers can separate stock and teind—take home their own—and stack and protect the teind-sheaves undestroyed and uneaten by beasts for eight more days—and without risk of accusation of evil intromission or spoliation—owner of teind, if non-resident, to appoint a responsible factor resident in the parish or in the nearest clachan, which name and residence he shall cause to be published in the parish kirk on the last Sunday of July, or first Sunday of August in presence of the minister and parishioners, that no ignorance may be pretended of factors, if no factor is appointed, after the four days' and the eight days' warnings—the heritors and labourers can separate stock and teind as ordained. Heritors and labourers can proceed if one-tenth or thereby of each sort is unshorn and when this tenth is ready, further warning must be given to the teind-owners in conformity to the law.

In 1587 an Act was passed for the annexation to the Crown of certain temporalities.[2] It was within the power of every

[1] *A.P.S.*, vol. iv, p. 541. [2] Ibid., vol. iii, p. 433.

successive King to withdraw from landowners grants of land made by any preceding King. For example, after the Rebellions in Scotland of 1715 and 1745, the Crown confiscated the lands and wealth of the leaders of the rebellions. Now in 1587 the Crown resolved to take back to itself certain lands which at the Reformation had been given to, or appropriated by, powerful laymen. This Act states that the teinds on such lands annexed to the Crown were not to be taken by the Crown except in cases where stock and teind were set together, and the owners of the teinds at the time were to keep them. Where the stock and teind were set together, the King was to be superior of the tenantry, and one-tenth of the rents would be paid over to the ecclesiastics and nine-tenths would go to the King. In 1592 [1] it was enacted that the erecting of temporal lordships of Church lands and teinds, since the Annexation Act of 1587, was prohibited and null and void. In the same year a Commission [2] was appointed to summon before them tacksmen of teinds in order to agree upon a reasonable sum to be the stipend of the minister of the Reformed Church in every parish. Naturally those who drew the teinds were still under an obligation to provide for a minister. The tacksmen were ordered to bring their tack for examination by the Commissioners to any place specified. The Commission was ordered to report to the Estates and fix a stipend for every parish. In order to put some restriction upon intromission of teinds an Act was passed in 1594 [3] that, unless with the consent of the patron, no man with a benefice of lower degree than a prelate could set tacks of teinds or other pertinents of benefices for more than three years. But in 1597,[4] notwithstanding this Act, Ludovic, Duke of Lennox, commendator of the priory of St. Andrews—that is to say, the powerful nobleman who, by some means or other, had acquired all the possessions of the Priory of St. Andrews—was to be allowed to set tacks of teind-sheaves

[1] *A.P.S.*, vol. iii, p. 544.
[2] Ibid., p. 553.
[3] Ibid., vol. iv, p. 64.
[4] Ibid., p. 155.

belonging to the Priory for periods as long as he cared, because he had little profit from the dilapidated and exhausted possessions of the Priory, through the granting of pensions and life rents. The pensions would have been probably the meagre allowances to the ministers or readers in the parishes, and the life rents would have been some allowances stipulated for the Roman Catholic clergy displaced at the Reformation.

In 1606 King James restored the bishops and granted them all their old lands available as well as parts of former abbey and priory lands. He even withdrew from the temporal lordship of the Duke of Lennox certain episcopal lands in order to restore them to the Archbishops of Glasgow and St. Andrews. In the same way Lord Spynie's loss in land was to the gain of the Bishop of Moray. The Bishop of Galloway got the Priory of Whithorn and the Bishop of Dunblane the Priory of Monymusk. James even had some of the Scottish bishops consecrated in London. Visiting Scotland in 1617 he restored to each cathedral its Dean and Chapter and to the members of the Chapter their manses, glebes, rents, and endowments. All the while the protestant working clergy gnashed their teeth and were still without a fixed stipend from the teinds. Annual Assemblies were not allowed; the bishops were to rule the ministers and the King to rule both. The ordinary ministers merely got an uncertain dole from the Thirds, as arranged in 1562. But the King having firmly re-established the prelatic system in Scotland by the Acts 'Anent the election of Bishops and Archbishops' and 'Anent the restitution of Chapters' passed also during his visit of 1617 the Act 'Anent the plantation of Kirks', whereby a Commission of thirty-two was appointed to increase the number of ministers in parishes and the stipends of parish ministers.[1] The Commission consisted of eight prelates (two archbishops and six bishops), eight nobles, eight lesser barons, and eight burgesses. By uniting small parishes these were to

[1] *A.P.S.*, vol. iv, p. 531.

make such arrangements as would ensure to each parish minister a minimum stipend of five hundred merks or five chalders of victual, with a manse and a glebe in addition, and a maximum stipend was fixed at a thousand merks, or ten chalders of victual. The Commission had powers to extend the tacks of teind-tacksmen, by way of compensation, if the teinds could not provide the stipend. The parish ministers must have been delighted with this act of bounty on the King's part, but the King expected them to accept at the same time a new confession of faith, a new liturgy, observation of festivals, confirmation by a bishop, kneeling at communion, &c. When the reformed clergy refused to agree to these innovations in ceremonial, &c., the King at first threatened to withdraw the Commission on stipends, but eventually yielded to Archbishop Spottiswoode, and withdrew his demands for innovation. Calderwood,[1] the historian, complained later that the Commission had favoured those ministers who supported the King's proposed changes of ritual, and that he reduced the expense of stipend to certain nobles by joining one hundred parishes on to others, and thus reducing the number of churches instead of increasing it. Connell [2] quotes examples of how the tacks of teinds were extended by very long periods. For example, the tack of teinds of the parish of Birse was extended for six terms of nineteen years, of Auchterarder for three lives and nineteen years, of Glassery in Argyllshire from 1618 to 1808.

By this Act of 1617, after years of complaint and clamour by the Protestant clergy for the whole teinds, Commissioners were appointed to assign at their discretion out of the teinds of every parish a perpetual local stipend to the ministers present and to come. From 1562 to 1617 the reformed clergy had drawn a share of the Thirds of Benefices, but by this Act their stipends became a direct and primary burden upon the teinds of their respective parishes. They were not made

[1] Calderwood, David, *History of the Kirk of Scotland*, p. 697.
[2] Connell, John, *Tithes in Scotland*, vol. ii, Appendix 31.

owners of the teinds by law, like their predecessors the Roman clergy, but were made mere pensioners upon the bounty of those who had despoiled them of what was admitted, in the Act of 1561, to be their own lawful property, namely, the teinds. The new parish clergy had been clamouring for the teinds all the time, and to this limited extent their interest was now recognized in law. The stipend was payable by the titular or lay impropriator, who drew the teind from the cultivator; or when the titular had let his teinds, the stipend was payable by the lessee who, in consideration of the burden laid upon him, obtained a prolongation of the term of endurance of his lease. In other respects the teind system remained as before, levied in the same way, and attended with the same grievances as formerly; the only difference was that the teind was now drawn by lay titulars, who did no duty in return, but paid a stipend to the minister who performed it, instead of being drawn by clerical titulars, who did no duty, but employed for that purpose a vicar, or one of the individual priests of the establishment to which the church was appropriated.

By 1621 the new ministers of the Protestant Church were further enforcing their claims, long resisted, to a fair share of the revenues of the Roman Church. Accordingly it was enacted that, if there was no arable land near the church to make four acres of glebe, the minister of the parish was to have sixteen soums of pasture grass (a soum was a measure of grazing land)—the most commodious and best pasture of any kirk lands nearest and handiest to the kirk, and, like the glebe, it was to be teind-free.[1]

To further enforce the Act of 1592, which compelled tacksmen to pay stipend to the minister, two more Acts were passed in 1617[2] and in 1621, whereby Commissioners were to call all patrons and tacksmen of teinds in those parishes where stipend was not yet fixed, or was less than the minimum, for the purpose of assigning a minimum stipend to the

[1] *A.P.S.*, vol. iv, p. 612. [2] Ibid., pp. 531 b and 606 b.

ministers of 500 merks or 5 chalders of grain, plus a manse and a glebe. (A chalder is equal to 16 bolls of grain.) The Commissioners were also instructed to unite such parishes in which the fruits of teinds were not sufficient to provide for a minister, and further, to settle who was to be the patron of the new composite parish, probably by appointing the patrons of the former individual parishes in turn. Stipend was to be fixed up to the exhaustion of the teinds. In 1621 power was given to the Commissioners to hear claims for the disuniting of parishes previously united, and for the appointing of a minister to each, and for the building of churches and the fixing of stipend. To this Act petitions were appended for churches by the parishes of Fetteresso, Roseneath, Lenzie, &c. Power was given to the Commissioners to request the lord of a benefice to erect a kirk, and if he refused, the tacksman of the teinds was to be compelled to do so, and was to be rewarded by an extension of his tack, or otherwise as the Commissioners might determine. This separation of parishes, which had previously been united on account of the insufficiency of the teinds to provide a minister, is very interesting. It seems to prove that at 1621, after a period of peaceful years under James the Sixth after the Union of the Crowns, more land was being cultivated throughout Scotland, and therefore more teinds were available from which each parish could claim a church and a minister. It is wonderful to picture what strides civilization could take if all the energy of men were directed towards the arts of peace and never towards the art of war.

In 1621 the Scottish Parliament confirmed the passing by the Assembly of 1618, of the famous Five Articles of Perth (Kneeling, Private Communion, Private Baptism, Confirmation, and the observance of five festivals), with a sop of another Commission on Stipends which was to further the work of the 1617 Commission, and separate certain parishes that had been united. Such was the state of Church stipends till the death of James the Sixth.

His son Charles began his reign over Scotland by a general revocation of all lands, granted from the old estates of the Roman Catholic Church.

Charles R.

We, Charles, be the grace of God King of Greate Britane, France and Ireland, Defendair of the Faith, &c., cleirlie understanding the remeid competent to us be the commoun law and lawes of our realme of Scotland, in revocatioun, of all and sindrie infeftmentis, confirmationis, ratificationis, alienationis, donationis, venditionis, or otheris dispositionis whatsomevir maid be us in our minoritie and les aige or be our praedicessouris in thair tymes in detriment and harme of our soule and conscience prejudiciall to the priviledge and fredome of the Crowne of Scotland and patrimonie of the samine, hurtfull to the Principalitie thairof, and to our rentis of our landis, lordshippis, baronies, annuel rentis, rightis of patronages and teyndis perteneing to us ony maner of way within our said kingdome of Scotland; and theirin following the example of oure most royall progenitours in thair Generall Revocationis alswelle maid be thame within the realme of Scotland as being outwith the samyne in forreyne countreyis; and we being now past our perfite aige of tuentie ane yeiris and within our age of tuentie fyve yearis, dureing the whiche tyme the remeid and priviledge of our revocatione is competant to us; we make our Generall Revocatioun in maner following. First we revok, retreittis, rescindis cassis and annullis all and sindrie infeftmentis, chairtouris, praecepts, confirmationis, ratificationis, alienationis, giftis, donationis, dispositionis, rightis and securities whatsomevir, maid or grantit be us at any tyme in our minoritie and les aige or be our umquhile father of blissed memorie for himself as Prince of Scotland, or as father and laughfull administratour to us, or to umquhile Prince Henrie, our brother of worthie memorie, or maid and grantit be the said umquhile Prince Henrie himself, of any landis, rentis, heretages, annulerentis, officies, patronages, teyndis, priviledgeis, or otheris whatsomevir perteneing or annext to the Principalitie or Prince of Scotland to the hurt or praejudice of the said Principalitie or Princes of Scotland. And also we revok, retreittis, rescindis, cassis, and annullis all and sindrie infeftments, chairtouris, praeceptis, confirmationis, ratificationis, alienationis, giftis, dispositionis, rightis and securities whatsomevir maid be us at ony tyme in our

minoritie and les aige of ony landis, annuel rentis, rightis of patronageis, teyndis, rentis, dewties, or priviledgeis whatsomevir perteneing to us ony maner of way within our said kingdome of Scotland to our hurt and prejudice &c.'[1]

One can well understand the alarm that spread amongst the Scottish lairds. A joint letter of Remonstrance was sent by the Privy Council to the King, dated 17 November 1625, explaining that the King's general revocation was 'haviely grudgit and murmurit at', the opinion being expressed that 'the gayne shall not prove answeirable to the overture'. The Scottish lairds saw very clearly that the King's main object was to raise money by a new financial composition with them. Charles yielded so far and replied:

'Howsoever we haif maid our Revocatioun after the maner that our praedicessouris had formarlie done, we doe certifie and declair by these praesentis that we do intend to make no benefite thairof by extending it ony further than onlie againis the Erectionis and other dispositionis whatsomevir of landis, teyndis, patronageis, benefices, formarlie belonging to the Churche and since annexed to the Crowne and of other landis and patronages whiche onywayes sould justlie belong to the Church or Crowne, and againis Dispositionis of Landis and Benefices mortified and devoted to pious uses, and of Royalities and Heretable Offices, and againis the change of holdingis since the yeir of God 1540 from the ancient tenour of Warde and Relieff to Blenshe and Taxt Warde.'[2]

The letter goes on to say that, though his Majesty might lawfully proceed at once to the recovery of the unjustly acquired properties or powers so specified 'without ony respect at all to the possessouris', he is disposed to act more clemently, and has therefore appointed Commissioners to arrange terms of composition with those who will surrender their rights before January first next. When, after a month, no surrenders were made, a summons of reduction (i.e. a declaration to make null and void) was issued to all concerned to appear and bring with them and produce all and sundry

[1] *Register of the Privy Council*, Series II, vol. i, p. xli. [2] Ibid. p. 105.

charters and infeftments by which they held lands and baronies, kirks, teinds, patronates appertaining to whatsoever abbacy, priory, or other benefice whatsoever together with all infeftments of heritable offices or regalities of whatsoever date, and to hear and see the same reduced, i.e. declared null and void. A Royal Proclamation of 21 September announced a first meeting of the Commission for the first Wednesday of November in the Laich Council House of Edinburgh, and to meet every Friday and Wednesday thereafter during the term of the Commission.

The main object of Charles's Revocation Edict was the recovery to the Crown of as much as possible of the alienated and dispersed properties and revenues of the Pre-Reformation Church—in a word, of the Church lands and teinds.

But when the first Wednesday of November came there was no meeting of the Commissioners, because further remonstrance was made to King Charles by two deputations sent to London by the nobles and the clergy. King Charles refused at first to see the three young nobles, and at Stamford they were forbidden to come nearer to London. In January the necessary permission was sent by Sir William Alexander, Secretary of State, and the interview took place with a successful issue. For on 17 January the following letter was sent to Edinburgh to the King's Advocates:

'Whereas the Earles of Rothes and Linlithgow and the Lord Loudoun, in name of diverse of the nobility and gentry of that our kingdom interested in the particulars of the Revocatioun, have humblie petitioned us that we might be pleased to grant a Commission of new for treiting and agreeing with our saids subjects concerning the same as might best stand with our ease and our benefite; and sieing from the beginning our intention in this was onlie for the generall good of that kingdome, and for the lawfull establishing at all tymes heirafter of a constant patrimonie and revenew to our Crown; we have been gratiouslie pleased at ther humble requeist to give way to ther demand in this; and therfor our plasure is that Summondis of Reduction and Improbation may sleep, and onelie be tabled and continewed to the

first of July, against all such personis as shall cum in to treat and agrie with our Commissioners, and goe on against all others who at tymes as shal be appoynted by the saids Commissioners for this effect, doe not cum in and agrie as aforsaid, and in the meantyme that the said noblemen and others have no interruption in ther lawful persute by law of ther vassals and tennents who doe unjustlie detene ther rents or tythes from them; without prejudice always to our title and interest hereunto.'[1]

On the same day a King's mandate was issued for a new Commission to supersede the former one and make a fresh start. It transpired later that the three young peers had looked after their own private compositions with the King very successfully; King Charles hoped doubtless to be able to count upon them to effect a general settlement this time on their return to Edinburgh. The great 'New Commission anent the Revocation' was duly proclaimed and published on 3 February 1627, known thenceforth as the 'Commission for Surrenders of Superiorities and Teinds'. It consisted of 68 persons, two joint presidents, 24 nobles, 9 prelates, 23 knights and lairds, 10 representatives of burghs. Three nobles, three bishops, three lesser barons, and three burgesses formed a quorum of 12. Many of the nobles were those Lords of Erections whose titles were challenged. The general remit to the Commission was 'to treat, &c., with such persons as shall bee contented to treat, &c., such reasonable satisfaction for the said erections and temporalities of benefices, rents, teynds, offices, &c., &c., unlawfully acquired or possessed by any of them and yet fitting to be secured unto the present possessours of the said propertie upon reasonable conditions'. Detailed directions were then given:

1. Concerning Church Lands and Temporalities of Benefices. No interference was intended by the King, if rentals were not reduced by the new holders, and provided always that the immediate superiorities and feu duties were devolved and established upon the King. A feu duty would be imposed upon the holders of abbacies, orchards, hospitals, &c., to show

[1] *Register of the Privy Council*, Series II, vol. i, p. 179.

that they were held by the King, and these holdings would be feued to no others over the heads of the present holders.

2. All changed tenures (to taxed ward, &c.) would be reduced to the old-fashioned tenure, or else confirmed for a reasonable increase of rent to the Crown.
3. *Teinds.* Power was given to divide up big parishes or disunite groups of parishes, to provide sufficient churches, stipends, and schools.
4. Finally, that a certain patrimony be established and annexed to the Crown.

It is clear throughout that Charles's main object is not to settle Scotland so much as to line his own pocket. Charles sent supplementary instructions to his Commissioners by letter dated 26 March 1627:

'Being well pleased to heare of your meeting and of your care for setling a course how to proceede in your Commission, wee approve your beginning with the Tithes, which have beene heretofor the cause of many troubles and oppressions the like whereof wee wold willingly prevent in tyme comming; and you will doe us most acceptable service in using your best endeavours, in so far as you lawfullie and convenientlie can doe, that evrie heritour of the kingdome may have the tithes of his owen lands upon reasonable conditiones, by what title soever they be now clamed or possessed by any other, that the churches may be provyded of sufficient ministers, the ministers of competent stipends, *and that we may have a reasonable increase of our revenue.*'[1]

The last clause was not the least important for Charles. The Commissioners, on 30 March 1627, at once increased the minimum stipend to eight chalders of victual (from five of the Act of 1617). By Proclamation of 12 April 1627 they ordained the appointment in each parish of a Committee of the minister with two or more sufficient persons 'to try and inform themselves by all lawfull wayes and meanes of the trew estait of the parish'.

The lesser barons or gentry were keen to purchase the teinds of their own lands, but were afraid of being made to pay too much by the wealthy titulars. And so they petitioned

[1] *Register of the Privy Council*, Series II, vol. i, p. 187.

the King, praying him first to purchase the teinds himself and to sell them forthwith to themselves. The King consented, and added to the number of the Commissioners five lesser barons. A conference of the lesser gentry was held in Edinburgh on 12 June to consider their own interests in this matter.

On 29 May 1627 the Commission decreed:

'The Lords declares and decrees his Majestie to have yeerly furth of the Teinds an Annuity of ten shillings the boll wheat, eight shillings the boll bear, six shillings oats and pease, meal and rye, and out of the seconds and worst oats three shillings, and of ilk hundred pound of silver duty of parsonage and vicarage teinds six merks yearly of annuity; and the intromitter or uplifter of the teinds to pay the said annuity yearly, and the tennent to have relieff of his master for payment of the said annuity'[1] (with the exception of Bishop's rents and ministers' stipends, and lands feued with teinds included *cum decimis inclusis* before 1587).

The hopes of the clergy to recover all the teinds revived once more, but were finally killed when Charles declared that he had no intention whatsoever of revoking teinds from their titulars.

Little by little the new lords of the Roman Church lands came before the Commissioners and made the best financial arrangement they could with the King for keeping possession of their lordships.

The Commission had not quite finished its work when Charles went to Scotland for his Coronation in 1633. The valuation and sale of the teinds dragged on for years after. During this period of transition it is important to note that teinds continued to be collected as before and that the collection was attended with the same old grievances. This state of matters was described, and it seems with accuracy, by King Charles the First in his first Large Declaration in 1629:

'We having daily heard the grievous complaint of many of our subjects of that kingdom, of all sorts, especially of the gentry and their farmers, who paid their tithes to the nobility, or such others whom they in that kingdom call Lords of the Erection or Lay Patrons—here in England we call impropriators—how that

[1] *Register of the Privy Council*, Series II, vol. i, p. 192.

in the leading or gathering of their tithes, these lords and lay patrons did use and practise the uttermost of that severity, which the law alloweth them; how they would not gather their tithes when the owners of the Corn desired them; but when it pleased themselves; by which means the owners, by the unseasonableness of the weather, were many times damnified to the loss of their whole stock, or most part of it (the law of that kingdom being in that point so strict, as no owner may carry away their nine parts, or any part of them, until the proprietor of the tithes have set out his tenth part) as likewise, understanding at the same time the deplorable state of the ministers of that our Kingdom in point of maintenance, how that they receive no tithes in their parishes, but some poor pittance, either by way of a stipendiary benevolence, or else some mean allowance from these lords of erection as lay patrons, unworthy of the ministers of the Gospel, and which exposed them to all manner of contempt, and a base dependence upon their patrons.'[1]

Amid the discontent of the landholders, the discontent of the tenants, and the discontent of the clergy, it is clear that the main fight lay between King Charles and the nobles, and that the King, jealous of the wealth of the nobility, was anxious to get back some of the land gifted by his father. The tussle went on for years, but gradually out of the mess a plan was evolved, which had been suggested by the early reformers, viz., to commute the teinds to a fixed payment, and to enable each landholder to redeem the teinds of his own land at a certain rate from the titular of the teinds. Before a settlement could be concluded, King Charles was obliged to abandon his claim to full revocation. The Lords of Erection resigned to him their superiorities over Church lands, and they allowed him an annuity out of the teinds. The teinds were valued and commuted to a fixed annual sum. They could be purchased by the heritor or landed proprietor. Before the final settlement submissions were made by all parties concerned—Lords of Erection, Bishops, Clergy, tacksmen, burghs, &c.—and in 1629 the King issued his 'decreets arbitral', as follows:

[1] Spelling modernized

1. When the teinds were drawn separately in the old fashion the amount had first to be proved by Commissioners specially appointed. These Commissioners appointed sub-Commissioners to clear the way in each parish, but the final decision was made by the full Commission. Proceedings were started either by the minister, titular, proprietor, or Presbytery's Procurator-Fiscal. From this amount there was deducted one-fifth, which was known later as the 'King's Ease'. 'We out of our fatherly and royal care for the weal of our said kingdom, ordain to be deduced off the said teinds severally valued, as said is, for the ease and comfort of our subjects, &c.,' and the amount of teind, subject to this deduction, should be fixed as the teind in all time to come.
2. Where teinds were not drawn separately, e.g. when a person had a lease of the teinds of his own lands, his Majesty declared that the teind should be held to be one-fifth of the constant rent of the land, including both rent and teind. The landlord's part was called the rent and the titular's part was the teind.
3. Every heritor had the right to purchase from the titular his own teinds at nine years' purchase of the amount as valued by the Commissioners.
4. If a tacksman had a lease of the teinds, he had a claim to a proportion of the price, corresponding to the value of his unexpired lease.
5. The teind purchased by the heritor was only that payable to the titular, and the stipend modified out of it to the minister was excluded.
6. Teinds payable to bishops could not be purchased by the heritor, but were paid as usual at a commutation value.
7. The judgment of the Commissioners was estimated generally in grain, but sometimes in cash, or in part of each. This is explained by the fact that rents at this time were generally paid in this way. The amount fixed by the Commissioners remained the teind of the estate for all time, subject neither to diminution, if all the estate went into pasture, nor to increase even if the produce and the rent increased one-hundredfold.

These decrees arbitral by the King were then ratified by Parliament, and regulate all matters of teind to this day. What was the general result? The landholders were able to

commute the burden of paying one-tenth of their produce into a permanent and invariable annual payment, fixed in grain or money, or both. The landowners got power to buy up this charge at nine years' purchase, and thus gradually throughout Scotland the two separate persons, titular of teinds and landowner, became merged in one as valuations proceeded. Those landholders who bought early did so at a low price before the great improvement in agriculture began. The result was that the price of the teind was a mere trifle compared with the fifth of the modern increased rental of the property. Those landholders who were late in purchasing had their teind fixed at a higher figure. Thus the date of commutation of teind directly affected the price paid at the sale of an estate, for a buyer naturally offered less for the land if he were liable to pay the full teind of the rental obtaining. At nine years' purchase it was wise to buy early. The whole teind continued to remain liable to be appropriated for the stipend of the minister; when the total teind as valued had become appropriated, then there could be no further claim upon the landholder for the stipend, because the teind had been fixed once for all by the Commissioners.

This great scheme of commutation was ratified in the Parliament of Scotland in 1633.

'For so much as our Sovereign Lord, out of his royal and fatherly care tendering the public good of this his Ancient Kingdom, did immediately after his happy attaining to the crown, publish and give forth his royal declaration anent the reforming of the abuses used in leading of teinds wherein his Majesty's umqhile father, of eternal and blessed memory, laboured so much in his time; and for provision and maintenance of kirks and other pious uses forth of the said teinds. And now his Majesty being, by God's gracious providence, present in his royal person within this His Majesty's ancient kingdom and holding this his first Parliament of his whole Estates of the same, with whom his Majesty hath advised and resolved to put that glorious work anent the teinds to a full perfection, &c.'[1]

[1] Spelling modernized. *A.P.S.*, vol. iv, p. 34.

England had to wait more than two hundred years for a similar change or commutation of her tithes.

It is clear throughout this period that very considerable annoyance was caused to farmers through delay in teinding at harvest time. Not only did the Church and its tacksmen cause delay in this respect, but the Church inflicted upon agriculture another extraordinary handicap in the form of Fast days. In the thirteenth century we find that in Scotland all farmers had to observe no fewer than thirty-four Fast days every year, upon which days it was unlawful to do any work.[1] And other days could be added as required by the Church authorities for any special reasons.

Accordingly we are not astonished to find that in 1633 King Charles the First granted legislation for the valuation of teinds, and the main object of this legislation was stated by the King to be, to enable the possessors of the soil to gather in their crops without any delay through teinding.

Therefore His Majesty with consent of the Three Estates by these presents, statutes, ordains, and declares that there shall be no teind-sheaves or other teinds, parsonage or vicarage, led and drawn within the kingdom, but that each heritor and life renter of lands shall have the leading and drawing of their own teinds, the same being first, truly and lawfully valued—the just and true rate of teind is and shall be the fifth part of the constant rent in stock and teind where the same are valued jointly—if teinds are valued apart, the rate shall stand as at present or be valued by the commissioners, less one-fifth for ease of the heritors —the price of teinds shall be estimated at nine years' purchase, all kinds of victual and goods being reduced to money, according to the worth and price of victual and goods in each part of the country—titulars of teinds are compelled to sell their teinds to heritors within two years of their being valued or of the majority of the titular—where teinds are not purchased, then the yearly rate shall be according to the valuation paid to the titular.[2]

King Charles reveals at the end of this Act that, whilst

[1] *S.E.S.*, vol. ii, p. 34.

[2] Spelling modernized and passage summarized from *A.P.S.*, vol. v, p. 31 et seq.

consulting to some extent the interests of his poorer subjects, he is not forgetting his own personal interests, for this Act stipulates that, whether the teinds are sold or not, a certain annuity is to be paid out of the teinds to the King himself. It is not to be imagined that all the teinds in Scotland were valued and commuted to money within two years of the passing of this Act. Two centuries passed before all the teinds in Scotland were valued. The reason for this was that soon after 1633 Scotland entered upon a particularly troubled period in her history. In the midst of civil wars, religious wars and rebellions on behalf of the Stuart cause, it was found impossible to carry out in practice this legislation for the commuting of teinds in all the parishes of Scotland.

Up to 1633 the teinds had come down through the centuries as a distinct species of property, quite apart from the lands producing them, with the result that the landholders and tenant farmers in every parish had in most cases nothing to do with the teinds of the lands they lived on and cultivated, except to wait patiently for the annual incursions of titulars or tacksmen or agents, who were to seize and carry off the teind-sheaves. The evident remedy was that provided by the Act of 1633, namely, the consolidation of the teind rights of every piece of land with the land rights of the same. The valuation of teinds, made under this Act, fixed for all time the amount of available teind, and when the amount of stipend, fixed or modified out of teind for the support of the minister, was equal to the total value of the teinds, then the free teind was said to be exhausted, and there could be no further augmentation of stipend in that particular parish. Where the stipend remained less than the total amount of the teinds, there remained what were called unexhausted teinds, and later on application could be made to have the stipend augmented at stated intervals.

NOTE.—Where the old spelling seemed to give undue trouble to the reader, it has been modernized, and the fact noted.

CHAPTER VII

# EFFECTS OF THE POLITICAL DISTURBANCES OF THE SEVENTEENTH CENTURY ON TEINDS

BY the Act of 1633 a commencement was made, by means of valuation and commutation, to abolish some of the evils inherent in teinding.

One of the greatest annoyances to farmers was the delay on the part of the titular to come and take away his sheaves. In this the titular often acted with deliberation; by causing annoyance, he compelled the heritor or farmer to purchase the teinds at a price more advantageous for the titular than the ordinary process of drawing and carting away the actual sheaves. Hence it is that long before 1633 we find an arrangement of rental bolls or of money in lieu of teinds.

Accordingly, if the teind were of a known amount, apart from the stock or rent, one-fifth was ordered by the Act of 1633 to be deducted from this amount for the ease of the heritor at valuation, because it was recognized that the teind, when so valued apart, was usually too high in comparison with the stock or rent. In fact the teinds sometimes exceeded one-eighth of the total produce.[1] By the stock was meant the produce left when the teind was drawn. Rent, when including teind, was generally reckoned as two-fifths of the produce. So we can establish the following approximate table:

| | |
|---|---|
| Total produce . . . | 10 tenths |
| Teind (when drawn). . . | 1 tenth |
| Stock . . . . | 9 tenths |
| Rent (when including teind). | 4 tenths |
| Rent (teind drawn separately). | 3 tenths |

If the teind were not known apart from the stock or rent, then one-fifth of the rent was made the teind.

[1] Stair, *Institutions of the Law of Scotland*, vol. i, p. 313, Edinburgh, 1832.

Thus the valued teind worked out at about the same proportion of the produce, no matter by which method it was calculated. For example, if 100 bolls of grain were the total produce of a farm, then 10 bolls formed the teind, and 30 bolls went for rent. If rent and teind were paid together, i.e. 40 bolls, then one-fifth was made the valued teind, viz. 8 bolls. If teind were known separately, viz. 10 bolls, then one-fifth was deducted, i.e. 2 bolls, and the valued teind remained, viz. 8 bolls.

Then all titulars or tacksmen were obliged to sell to the heritors their teinds at nine years' purchase. But the actual purchase by heritors was long delayed, because titulars and tacksmen, with fifteen years' right prior to 1628, retained powers to allocate teinds to others. This power was withdrawn in 1693. But heritors did not get powers to purchase teinds of hospitals and colleges, although these teinds were valued.

At the Reformation, and with the disappearance of the Roman Church, there were new claimants for the teinds. The King as *ultimus heres* had an interest; the titulars, to whom the teinds had been sold or given in trust, stated their claim, which was a doubtful one. By the Act of 1633 the titulars surrendered their rights to the King, who confirmed their questionable rights, and gave the heritors the benefit of drawing their own teinds upon a valuation; at the same time an annuity was appointed to be paid to the King out of the teinds.

Out of this teind settlement the King reserved for himself, as his yearly annuity,

10*s*. Scots per boll of wheat and barley.
8*s*. ,, ,, pease and rye.
6*s*. ,, ,, oats.

These annuities were disposed of by King Charles the First to James Livingstone, First Earl of Callander, who was the third son of Alexander, first Earl of Linlithgow. In the *Dictionary of National Biography* he is stated to have been

one of the gentlemen of the bedchamber to King Charles the First, and on the occasion of the King's Coronation in Scotland, on 19 June 1633, he was created Lord Livingstone of Almond. These annuities were to be uplifted by Livingstone until he had drawn in a sum of £10,000 sterling. Livingstone disposed of his rights to John Campbell, first Earl of Loudoun, who had great difficulty in collecting his dues in the troublous times of the Covenant. His son tried to enforce payment after the Restoration but a King's Warrant stopped him in 1674.[1] Where the teind was estimated in money the King's annuity was calculated at six per cent., and reckoned as a *Debitum fundi*. It was sometimes purchased by the heritors from those having right to it from the King.[2]

Whilst the many evils inherent in teinding helped to bring on the law of commutation in 1633, the most urgent reason for this law was undoubtedly the financial need of King Charles the First. The problem of carrying on the Government of the country without supplies from Parliament was one of unending difficulty. The army and the navy, from time to time, were mutinous from lack of pay. The King devised all sorts of schemes to raise money. In order to help the Colonial schemes of Sir William Alexander, in Nova Scotia, from which he had great hopes, the King gave to Sir William power to sell baronetcies to those who would subscribe substantially. Baronetcies were then offered to poor highland lairds willing to migrate. The dowry of Henrietta Maria of France kept the King going for a little, but he had to make peace terms with France and agree to the evacuation of Quebec and Port Royal by the Scots. After the winter of

[1] Stair, *Institutions*, vol. i, p. 313. See also *Digest of Decisions*, 1867–1877, p. 915. Among the Caskieben estate papers, 12 Dee Street, Aberdeen, there is the following: 'Extract disposition by John, Earl of Loudon, with consent of the Barons of Exchequer, in Scotland, to Thomas Shand of Standingstones, of all annuities payable out of the Teinds of Standingstones to His Majesty, dated 20th and last days of December 1661, and registered in the Books of Session, 3rd January, 1662.'

[2] Sir George Mackenzie, *Works*, vol. ii, p. 308, Edinburgh, 1722. Sir George was advocate to King Charles II and King James VII.

famine 1622–23 the expedition organized by Sir William Alexander to Nova Scotia and Cape Breton Island could not sail for lack of provisions.[1] To provide temporary relief it was once proposed that a special eleemosynary tax should be levied in each parish upon all who were able to contribute. Truly the seventeenth century in Scotland, from 1630 to 1688, was an unsettled time, full of stirring and critical movements in the whole land. There was the National Covenant and the Bishops' War, the Solemn League and Covenant, Dunbar and Worcester, Rullion Green, Drumclog, and Bothwell Brig. By 1688 Scotland was weary of conflict. Throughout the century there was no leisure and no energy for any social amelioration. Accordingly we must not expect to find that in 1633 there was a complete commutation by Act of Parliament of all the teinds in the land. On the contrary, whilst there was a beginning of commutation in a few parishes, the complete change-over to a new system of payment of teinds was destined to require about two hundred years; intromissions of teinds went on merrily as before, and in fact records prove that the Act of 1633 rather encouraged titulars of teinds to make new and long leases of tacks in order to circumvent the Act.

The Act of 1633 for the plantation of kirks and the valuation of teinds was renewed at peaceful intervals throughout the century; the work undertaken by the original Commission of 1633 was resumed from time to time, and new Commissioners were appointed in the place of those deceased since the previous Act. Such Acts of renewal were passed in 1641, 1644, 1647, 1649, 1661, 1672, 1685, 1686, and 1690. As to who served as Commissioners, we have clear evidence from a letter from His Majesty King Charles II, dated 20 April 1682, in which he added the following names to the Commission for Plantation of Kirks and Valuation of Teinds: 'Duke Hamilton, Earle of Perth, Earle of Strathmore, Earle of Roxburgh, Earle of Southesk, Sir David Falconer of Newton, Sir Patrick

[1] Insh, *Scottish Colonial Schemes*, p. 115.

Ogilvie of Boyne, Lieutent General Drummond Gordonstone, younger, Sir James Fleeming, and Baillie Charles Murray.' These landed proprietors would certainly endeavour to keep the valuations low and to grant stipends of as small an amount as possible.[1] There is evidence to show that the noblemen, who held the bulk of the teinds, deliberately circumvented the Act, for the Earl of Crawford and Lindsay [2] was allowed in 1648 by Parliament to alienate various teind-sheaves to David Buchanan. In 1649, when Charles was executed and the Puritan Commonwealth established, it is natural to find changes in the Acts concerning the Church of Scotland. In the first place an Act [3] was passed to abolish patronage, a custom described as merely popish and brought into the kirk in time of ignorance and superstition, contrary to the *Second Book of Discipline*, and prejudicial to the liberty of the people and the planting of kirks. All titulars, tacksmen of teinds, heritors, life renters, or others subject and liable in payment of Ministers' stipends, were ordered to make payment of the same 'notwithstanding the minister, his want of a presentation'. The patron's title and right to teinds were not affected, but the patron was ordered to sell his right to the heritor for six years' rents according to the price of valued bolls in the various years. In the same year, and just a little later, an Act [4] was passed anent stipend, glebes, and manses. In the preamble of this Act the condition of ministers is described. They lack sufficient maintenance, they lack legal security, and they lack timeous and thankful payment of stipend. Thanks also to the unsettled times, prices had been increasing rapidly. The minimum stipend was increased to eight chalders in victual or money—from five chalders as fixed by the Act of 1617. Heritors who delayed to make payment were to be fined one-fifth of the stipend, plus legal expenses. Ministers were given power to poind, and the judges were to be the Commissioners. Manses were ordered to

[1] *Letters to the Earl of Aberdeen*, Spalding Club, p. 42.
[2] *A.P.S.*, vol. vi, part II, p. 722. [3] Ibid., p. 411. [4] Ibid., p. 430.

be built and repaired, and their total cost was to run between a minimum of 500 merks and a maximum of a thousand pounds Scots. In some parts ministers did not have free entry to their manses. Proper glebes had to be provided near at hand, plus grass for one horse and two cows in addition. Part of a large parish might be added to a small parish. A new list of Commissioners was published to carry on the work of the Commissions of 1641, 1644, and 1647, and eleven were to form a quorum, three from each Estate.

In the same year, 1649,[1] complaint was made to Parliament that no stipend was being paid in Argyle owing to the Rebellion. Accordingly the ministers there were ordered to revert in that time of stress to the old method of drawing the teind-sheaves *ipsa corpora* themselves in the place of the titular or the tacksmen, if these were not willing to pay stipend. Four or more valuers were appointed to supervise the leading of the teinds if necessary.

A similar complaint was made in the same year that the rents of the late Marquis of Huntly and Lord of Aboyne were not paying stipend, and payment was ordered at once.[2] That family was stoutly Roman Catholic.

In the Presbytery records of Fordyce in 1650 we find a complaint that the manse buildings at Rathven were not being maintained, and the description is given of the ruinous condition of the buildings.[3]

'Ane note of the Bigging on the Mans of Rathven at Mr. Wm. Scrogie's entrie in anno 1649.'

1. A stonne hous sklaitted wtout riggingstones.
2. In the hall a double firr dorre, three windowes wt old broads of timber, whereof one is glassed wanting some lozens, in the end of the hall is a pantrie wt a thinne wal of stak and rys wt a single dor;
3. the passage up to the loft hath ane old single broken firre dore and a timber stair.
4. Above the wtter chalmer hath tuo windowes wanting glass

[1] *A.P.S.*, vol. vi, part 2. 424. [2] Ibid., p. 337.
[3] Cramond, *The Church and Churchyard of Rathven*, p. 20.

wt old broads of timber, a partitione wall of old single dealls wtin qulk is a chalmer fylled above wt ellewen dealls. In it ar tuo windowed qroff one hath some broken glass in it. In the studie a glassen window wt sindrie broken lozens, but wel broaded. On the wast syd of the closs a barne wt a for and back dor, a byr wanting a dor, and ane stable wt a broken dor, all wch houses ar ruinous. On the east syd a barne wt tuo dors, a garden wt dyks wtout the gat, upon the north syd theroff ther is ane little old kill.'

The parish of Rathven was notoriously anti-Presbyterian, the opposition being led by the heritors.

All along the teind-holders held fast to their teinds, and once more, in 1653, legislation was repeated under Cromwell to cause the teind-holders to sell their teinds to the heritors in Scotland, as the law was in Scotland. How natural it is to hold on firmly to vested interests! It was at this time that Cromwell transferred the teinds of the Bishopric of Aberdeen to the Universities of Aberdeen, two-thirds to King's College and one-third to Marischal College.

Whilst teinds were in most cases a burden upon agriculture quite apart from rent, yet we do find examples of teinds included in the annual rent charge—*cum decimis inclusis*, for example,[1] in 1657—'All and Haill the lands of Lundeath commonly called the Glebe and Kirklands of Lundeath, with the Teinds, parsonage and vicarage thereof, *which were never in use to be separate from the stock houses, Biggings, yards, crofts, &c.*' It is important therefore to note that precedents did exist in Scotland for the commutation of teinds and for their inclusion in the rent charge by the heritor before the Act of 1633.

At the Restoration Charles the Second and his Parliament restored [2] to the Bishops and Archbishops any teinds taken from them since 1637 by any *pretended* Parliament. As the century goes on, the confusion in teinds becomes worse confounded. Charles the Second allowed the leasing of teinds to go merrily on, for his friends, the great landowners in

[1] *Records of Invercauld*, p. 198.

[2] *A.P.S.*, vol. vii, p. 475.

Scotland, were clinging ever to their old privilege of dealing in teinds. Accordingly lay patrons and heritors were permitted to agree with beneficed persons for tacks of their teinds, provided the tacks were not prejudicial to the stipend and maintenance of ministers. Once more the claims of the ministers were pushed into the background, and bishops and landowners were all-powerful in the matter of teinds. Once more ministers were instituted in their parishes by virtue of letters of collation from a bishop.[1]

In 1672 Charles the Second appointed a new Commission for the plantation of kirks and the valuation of teinds.[2] Each Act of this kind invariably refers back to the Act of 1633. This Act of 1672 began with a reference to the delay in carrying out the commutation of teinds. 'By reason of the unhappy troubles and distractions of the late times, that good and necessary work neither is nor could be thoroughly and fully accomplished.' All the bishops were appointed to this Commission along with nobles, barons, and burghers, and any eleven were to form a quorum to meet in Edinburgh. Their remit was, to value what teinds remained unvalued, and to accomplish this work through sub-committees. The Commission was ordered to beware of collusion between titulars and heritors. The Acts [3] at this time provide evidence of disputes between titulars and heritors regarding valuations. Naturally the heritors, when about to purchase, endeavoured to get from the Commissioners as low a valuation of the teind-sheaves as possible, whilst the titulars struggled to postpone the date of sale by valuation, or to fix the valuation as high as possible. This Commission of 1672 was ordered to fix stipends, to prolong tacks if necessary, and to unite or separate parishes as seemed good. The heritors were allowed to buy their teinds within three years, and appeals were to be heard against valuations made by the Com-

[1] Aitken, '*Life and Works of John Arbuthnot*'. Institution of Rev. Alexander Arbuthnot by the Archbishop of St. Andrews in 1665 to Arbuthnot parish. [2] *A.P.S.*, vol. viii, p. 78. [3] Ibid., p. 24.

missioners of any *pretended* parliament, that is, of the Commonwealth. A revaluation of lands for the purposes of the land tax became necessary in 1674, and the valued rents had to be revised because of the redistribution of land after the Reformation, and because during the Civil Wars certain lands were neglected and fell out of cultivation. The lairds of extensive lands, suspecting a new basis of taxation, returned a minimum of value of their lands, whereas the lairds of small properties, out of vainglory, were inclined to return a rather high value. This new valuation of land affected the teinds in those parishes where no valuation of teinds at one-fifth of the rental had yet been made. Early valuation of teinds was profitable to the heritor but not to the minister.

The process of locality of teinds often proved difficult; that is, within a parish, it was difficult to distribute the amount of teind payable by each heritor within the parish. For example, it was found impossible to fix the amount of teind due by Braichley Estate [1] to the tacksmen who collected the teinds for King's College. The Civil Court ordered the proprietors and the tenants alike to be put on oath, because from recorded data it had been found impossible to estimate the teinds. All professed ignorance of the amount of oats sown and reaped; some even swore that they did not measure their grain by bolls, while others said that 23 pecks would not make a boll. In other words the tenants declined to become implicated in this vexatious tax of teind. Rents paid in kind and in services were difficult to estimate in cash, and the tenants doubtless gave evidence to favour the lairds.

In 1690, and again in 1693,[2] after the Revolution, and in the reign of William and Mary, new Commissions were appointed for the plantation of kirks and the valuation of teinds. Once more reference is made to the incompleted Act of 1633. The Commissioners were instructed to beware of collusion between titulars and heritors, who together

[1] *Records of Invercauld*, p. 245 (1681). [2] *A.P.S.*, vol. ix, p. 200.

endeavoured and arranged to fix as low a valuation of teinds as possible, to the great prejudice and loss of the minister of the parish. Collusion was declared if one-third of the rent was deducted before the fixing of the valuations. There was no drastic change in this remit, which closely resembled its predecessors. Patronage was abolished, and the minister was to be proposed by the Protestant heritors and elders for approval by the congregation. In the event of a delay of six months the vacancy could be filled by the Presbytery. If teinds were not heritably disponed, then they were to go to the patron, under burden, as usual, of the minister's stipend plus augmentations, and patrons acquiring teinds in this way were to sell them to heritors at six years' purchase.

At the Revolution in 1689 Episcopacy was abolished, but the Episcopalian parsons were not deposed immediately. In many cases, where they had the support of the local landed proprietors, they clung to office for several years, and were paid their stipend out of teinds by their wealthy Episcopalian heritors. For example, at Rathven [1] the Rev. John Hay refused in 1689 to pray for William and Mary and for the Estates. He was not deposed until 1694, and after that he continued to hold services elsewhere within the parish. The heritors declined to appoint a minister, and when the Presbytery, after the lapse of six months, attempted to appoint a minister, it was prevented with violence by the local heritors. In fact a minister was not settled until 1701. During these troubles no stipend had been paid to a Presbyterian minister and the church buildings were in a ruinous condition. Accordingly the Presbytery and the heritors, instead of having the manse valued, agreed to deal with the Duke of Gordon and the Laird of Rannes to procure some of the lapsed stipend for repairing the manse. The heritors appointed George Hay, another Episcopalian, who, in defiance of the Presbytery, remained in the church and manse until the Court of Justice in Aberdeen ousted him in 1713. Again

[1] Cramond, *The Church and Churchyard of Rathven*, under dates specified.

and again the heritors tried to persuade the Presbytery to accept him but in vain. All the heritors with strong Episcopalian leanings joined the Rebellion of 1715, and no Protestant minister was settled until 1716. Even in 1720 the local Presbytery reported that the fabric of the church was still ruinous, and that the lapsed stipends were still unpaid. Mr. Gordon, the minister, had got no decreet of locality, and was still gathering his stipend so far as he could, according to use and wont. Accordingly an extraordinary visitation by the Presbytery was made at Rathven. It found that the church was neglected by the Roman and Episcopalian heritors and people, and that out of 1700 catechizable persons 600 were Papists.

'Some of the heritors pay his stipend very well, but others are greatly deficient, and he [the minister] is obliged to send to the heritors' houses to receive and carry home the most of the victual, on his own horses, or horses hired by him. He is provided in moss by Rannes, where his predecessors had been served time out of mind, but got no assistance in casting or leading his peats. He gets no assistance in labouring his gleib, in cutting down and leading his corns.'

The Presbytery deplored that the minister could not draw a minimum stipend of 800 merks, as it was very ill-paid. From this we can realize how, even in the eighteenth century, local government was still very defective and the local gentry all-powerful. Rathven did not get a definite arrangement of its teinds by decreet of Plat until 1727.

In the meantime there came the Union of Parliaments in 1707, cordially recommended in 1705 [1] by Queen Anne as 'the most effectual way for extinguishing the heats and differences that are unhappily raised betwixt the two nations'. With the Union, the Teind Commission was replaced by the Lords of Council and Session, and these latter were given powers generally to carry on the labours of the old Teind Commissioners, namely, to determine in all valuations and sales of teinds, to grant augmentation of stipend, to grant

[1] *A.P.S.*, vol. ii, p. 295.

prorogation of tacks, to disjoin large parishes, to erect churches, to annex and dismember churches as they thought fit.[1] For these added duties the salaries of the Lords of Session were increased. Most unfortunately, in 1700 the Register of Teinds was burned, and the Lord Clerk Register was ordered to supply what authentic extracts he could.

The following law cases dealing with teinds are reported in the *Dictionary of Decisions*, and reveal something of the difficulty and irksomeness of collecting teinds.

1548. *Spuilzie of Teinds.* p. 15625.

The Laird of Merchiston pursued the Goodman of Wrights Houses for spuilzie of teinds, that is, for the removal of teind-sheaves without the consent of the owner of them. The accused argued that Merchiston could not pursue for the whole of the teind-sheaves, seeing that he held rights of possession to part of them only. The lords held that Merchiston, as owner of part, could take action in a case of spoliation of the whole.

1584. *Method of Teinding.* p. 15625.

James Ruthven, brother-german to the Earl of Gowrie, holding teinds of the sub-chancellory of Dunkeld, came to the barnyards of Robert Crichtoun of Inverneythie and of certain of his tenants, and casting down the stacks, did draw teinds in presence of the farmers. These poor farmers accused James Ruthven of stealing sheaves from them. The Lords found that the casting of stacks was no lawful manner of teinding, and that the ordinary method was to teind the sheaves in the field.

Doubtless the teind-holder had been late in coming for his sheaves, and when he did come, the sheaves, unprotected in the field after a certain date, had disappeared, having been stolen or eaten by the cattle wandering over the stubble.

1610. *Method of teinding.* p. 15626. *Hamilton against Spence.*

No action for spuilzie could be taken if the method of

[1] *A.P.S.*, vol. x, p. 230.

teinding laid down by Act of Parliament was observed, viz. a first requisition was made to the teind-holder to come and draw his teind within fifteen days of the shearing of that particular crop; a second requisition was made seven days later; then the teind was sighted by neighbours, stacked upon the ground, and kept till Halloween.

1610. *Decimae debentur parocho.* p. 15626. *Ramsay against Lord Roxburgh.*

It was decided that teind-sheaves belonged by law to the parson, and if a vicar claimed any he had to produce documentary evidence in proof of his claim.

1611. *Vicarage teind.* p. 15722. *Bailie of Munkland against tenants.*

In the case of vicarage teinds, if a tenant had only four lambs or stirks, the tacksman got no teind thereof. If he had five or six, he was debtor for a half-lamb or half-stirk. If he had seven, or above, under ten, the tacksman got one of teind. Of the profit of wool he got of ten pounds one pound. Of the profit of sheep or cow's butter or cheese, the tacksman got the tenth pound, and for every ten cartfuls of hay one cartful.

1627. *Inglis against Kirkwood.* p. 15628.

Kirkwood, a heritable proprietor, took upon himself to let land to a tenant for stock and teind promiscuously—that is to say, the rent paid by the tenant included both rent and teind. The Lords found that the heritor Kirkwood, and not the tenant, was liable to the teind-holder for payment of teind and for unlawful intromission with teinds.

This decision proves clearly that teind and rent were burdens upon cultivators of land, quite distinct and apart up to 1633.

1633. *College of Glasgow against Stuart.* p. 15631.

The College of Glasgow had the right to the teinds of the parish of Govan. For thirty or forty years the College had accepted cash in lieu of teind bolls of grain. In 1633, for

some reason unstated, the College claimed the teind bolls in grain. This farmer Stuart declined to pay in this form and offered the teind-sheaves, *ipsa corpora*, in accordance with the correct method of teinding. The Lords had to decide that this last method was the correct and rightful method of payment.

Very probably grain was dear owing perhaps to bad weather, and each side wanted the more profitable method to itself of teinding.

From 1633 to 1660 there is a gap in teind decisions in the Dictionary. This is not surprising, when we remember the unsettled conditions in Scotland, ending in civil war and the establishment of a commonwealth under Cromwell. With the Restoration in 1660, decisions in teind cases abound.

1662. *Laird of Renton against Mr. Mark Ker.* p. 15632.

The Lords decided that no annuity was due to the King by one infeft with teinds included, *cum decimis inclusis.*

1662. *Earl of Calendar against Andrew Monro.* p. 15632.

The Earl of Calendar pursued Andrew Monro for the valued teind duty of his lands for several years back. Andrew Monro declined to be responsible for intromission with teinds by any predecessor of his. The Lords decided that teinds did not become *debita fundi* by the Act of 1633, but remained *debita fructuum*, and therefore did not affect singular successors.

This is a very important decision, which has been reversed by the Act of 1925, whereby the land charge, replacing the teinds, became a *debitum fundi.*

Thus the Church of Scotland has now a stronger legal hold upon this burden on land.

1664. *Thomas Crawford against Preston Grange.* p. 15683.

The Lords decided that the lands of Preston Grange were part of the Abbacy of Newbattle, of the Cistercian Order, and therefore teind-free, and that this freedom of teind applied not only to the temporal lords of erection but also to their vassals in such lands.

1665. *Scot of Thirlston against Scot of Braidmeadow.* p. 15722.

It was claimed that the minister was receiving only every twentieth lamb, or half-teind. The Lords found that vicarage teind was due *secundum consuetudinem loci*, and no more could be claimed unless the pursuer could prove a tack or use of payment of more.

Here we have evidence of the difficulty of stating any exact rate of teind, especially in the case of vicarage teinds. In a previous chapter we noted that Arthur Young found the same state of matters all over Europe.

1666. *A Minister against Lord Elphinston.* p. 15723.

The minister claimed payment of full vicarage teinds. The Lords found that the customary vicarage teind paid in 1666 was restricted to stirks, lambs, and wool, and declined to grant for milk or anything else. The defender argued that, when the vicarage teind was small, and the most of the land under crop, it was never craved, time out of mind.

1668. *Minister of Elgin against Parishioners.* p. 15724.

The minister claimed teinds of gardens in Elgin. The Lords decreed that the only surviving customary vicarage teinds were stirks, lambs, wool, and milk; as none of these were produced in the gardens, the claim failed.

See also *Brown's Supplement*, vol. i, p. 569, for similar decree.

1673. *Montgomery against Montgomery.* p. 15639.

The annuity of teind, payable to the King or his agents, is a burden upon the principal tacksman.

1676. *Alexander Burnet against William Gibb.* p. 15640.

Burnet held a tack of the teinds of St. Nicholas Parish from the Bishop of Aberdeen. Gibb drained and enclosed a marsh, Fittismire, near Footdee; he first grew grain, and then kail, carrots, and herbs. Burnet claimed grain teind. The Lords decided for the defender, that kail, herbs, and roots were not teindable in that locality.

It is mentioned in this case that land was beginning to be enclosed in the neighbourhood of Edinburgh and other towns to a large extent. Can we conclude accurately that this was the beginning of the enclosure movement in Scotland ?

1677. *Hay against Douglas.* p. 15644.

Hay, a teind-holder, had ceased for four years to draw the *ipsa corpora,* and drew a cash payment instead. Then he wanted to resume his teind-sheaves, but was prevented by Douglas. The Lords decreed that the pursuers must first take legal measures to warn the tenants of the change back to *ipsa corpora.*

1679. *College of Aberdeen against the Town.* p. 15645.

The town had long paid teinds in rental bolls. The College had given a tack of these teinds to a tacksman, and the tack expired. The College wanted to resume drawn teinds, and the Lords granted this until a valuation might be made.

1681. *Drummond against Dalrymple.* p. 15725.

It was found that payment of teind in kind upon one lamb was impossible, *salva rei substantia,* and that the owner was liable for payment of one-tenth of the price of the lamb.

1695. *Sir William Bruce against Sir David Arnot.*

Sir David Arnot converted his arable land into grass and refused to pay parsonage teind. Sir William had no claim on vicarage teind. The Lords decided that the titular could claim teinds parsonage only on laboured land, and could not prevent the proprietor from sowing grass. The remedy for pursuer was to pursue a valuation by the Act of 1633.

Here we see, thus early, a landed proprietor experimenting with sown grass. This case must fix the date of the introduction of sown grass as a definite crop in rotation in Scotland.

In the seventeenth century the outstanding event is the Commutation Act of 1633. A commencement was made with the valuating of teinds, but progress was retarded by the political unsettlement of the century.

CHAPTER VIII

# THE FIXING OF VALUES OF TEINDS IN THE EIGHTEENTH AND NINETEENTH CENTURIES

THE following Act was passed to deal with teinds, after the Union of the Parliaments:

*Act anent Plantation of Kirks and Valuation of Teinds. A.P.S.*, vol. xi, p. 433. *Commissions replaced by Lords of Council and Session.*

'Our Soveraign Lady and the Estates of Parliament, considering the great prejudice that does redound to this nation through the want of ane established and fixed Judicature which may cognosce and determine in such causes and things as by former Parliaments were referred to their Commissions for plantations of kirks and valuation of teinds, and through the loss of the registers of that court which were burnt in the late fire that happened in this place, therefore Her Majesty and the said Estates doe hereby impower, authorize and appoint the Lords of Counsell and Session, to judge, cognosce and determine in all affairs and causes whatsomever which by the laws and Acts of Parliament of this kingdome were formerly referred to and did pertain and belong to the jurisdiction and cognisance of the Commissions formerly appointed for that effect alse fully and freely in all respects as the said Lords do or may do in other civil causes, And particularly but prejudice to the generality forsaid, to determine in all valuations and sales of Teinds, to arrange augmentations of ministers' stipends, prorogations of Tacks of Teinds, to disjoin too large paroches, to erect and build new churches, to annex and dismember churches as they shall think fit, conforme to the rules laid down and powers granted by the nineteenth Act of the Parliament 1633, the twenty-third and thirtieth Acts of the Parliament 1690 and the twenty-fourth Act of the Parliament of 1693, in sua far as the same stands unrepealed . . . with the consent of the heritors of three parts of four at least of the valuation of the paroch for the transporting of Kirks, disjoyning of too large paroches, or erecting and building of new kirks.'

In a word, the Commissions appointed from 1633 by the

Scottish Parliament to deal with teinds are replaced by the Court of Session. And in the eighteenth century, as land increases in value, all proprietors become anxious to procure a valuation of the teinds of their lands. Yet some teinds were not valued until the nineteenth century.

In the Union settlement made with England in 1707 it was stipulated that the successors of the Lords of Erection be granted definite ownership of all Church lands appropriated at the Reformation. The gentry who made the bargain for Union very naturally made themselves as secure as possible in their lands.[1]

Here is an example of a receipt granted by King's College,[2] Aberdeen, for teinds paid to it in the early eighteenth century:

'I, Alexander Rait, Common Procurator of King's College, grant me to have received from Alexander Farquharson of Monaltrie the sum of eighty pounds Scots money as ye silver vicarage duty due to ye King's College out of ye lands of Glenmuick, &c. and sixteen pounds mony foresaid as ye converted price of four stone of wrought butter, due also out of sd lands. And that for cropt and year of God 1734. Vicarage duty and all precedings is hereby discharged. In witness whereof I have &c.

16th December, 1734. Al. Rait, Common Procr.'

As we progress through the eighteenth century the cost of living steadily increases, and with that, money Scots depreciated rapidly in value and finally disappeared in 1768. But ten years before that, the accounts of the City of Aberdeen were made out in money Scots for the year 1758–9 for the last time.[3] With the increase of the cost of living the ministers agitated for an augmentation of stipend. The Assembly in 1749[4] applied for a general augmentation from 800 merks to 10 chalders of grain or its value in money. The clergy having shown great loyalty and zeal during the Rebellion of 1745, as was acknowledged by the Government,

[1] Act 1707, cap. 84.
[2] *Records of Invercauld*, p. 284.
[3] Munro, *Common Good of Aberdeen*, p. 37.
[4] Carlyle's *Autobiography* (Foulis), p. 237.

presumed that they would obtain favour on this occasion. But they had not consulted the landed interest, nor even taken the leaders of the Whigs along with them, which was the cause of their miscarriage. All this time the landed proprietors regularly passed on the payment of teinds to their feuars. A precept of 'Clare Constat' of 1752[1] stated: 'For the teinds, the feuar is to relieve the superior of the minister's stipend payable furth of the said lands.'

Having failed to secure an increase of stipend from their teinds, the clergy in 1769 endeavoured to get freedom from the window tax. The famous Alexander Carlyle of Inveresk was sent to London to intercede with the Treasury.[2] He pointed out that the ministers had each a glebe, which was free of land tax and public burdens; they had also suitable manses and offices, but they had stipends only from teinds allocated to them. He pleaded that the heritors were slow to help them with stipend, and asked that ministers be relieved of taxes upon houses and windows. The window tax was eventually removed from the clergy, but not until 1782. In the same way the parish ministers have never paid poor rate upon their manse, offices, and glebe, but as from Whitsunday 1927 by the Rating Act, 1926, parish ministers will pay their share for the poor like other people. In 1788 Sir Harry Moncrieff Wellwood published his 'Sketch of a Plan for Augmenting the Livings of the Ministers of the Established Church of Scotland'. He pointed out that since the Reformation the landowners had clung to the unexhausted teinds, since possession was more than nine-tenths of the law. Alexander Carlyle in various Assemblies pleaded for augmentation of stipend, arguing that the clergy had helped to establish the Hanoverian succession, and always supported law and order. The Government brought in a Bill for the augmentation of stipends, but it had to be abandoned because the county gentlemen were too strong.[3]

'I must confess,' said Carlyle, in one of his speeches in the

[1] *Records of Invercauld*, p. 45. [2] *Autobiography*, p. 522. [3] *Ibid.*, p. 589.

Assembly, 'that I do not love to hear this church called a poor church, or the poorest church in Christendom. I doubt very much that, if it were minutely inquired into, this is really the fact. But independent of that, I dislike the language of whining and complaint. We are rich in the best goods a church can have—the learning, the manners, and the character of its members. There are few branches of literature in which the ministers of this church have not excelled. There are few subjects of fine writing in which they do not stand foremost in the rank of authors, which is a prouder boast than all the pomp of the Hierarchy.'

An augmentation of stipend from unexhausted teinds was authorized by the Teind Court in 1790, under pressure from the annual Assemblies of the Church of Scotland, for the clergy were being allowed almost to starve. They were enabled now to survive such years of dearth as 1799 and 1800. This right to augmentation was conceded when the land estates in Scotland were being doubled and tripled in their rents; otherwise it could not have been done without a clamorous opposition.[1]

At this point it will be profitable to cast a look backward and a look forward, to see how the heritors acquitted themselves of their *duties* as holders of the teinds of their own lands. The burdens upon teind were: the provision of stipend, the construction and maintenance of ecclesiastical buildings and churchyards, the maintenance of the poor, and communion elements.

We have just shown how very reluctant the heritors were to grant augmentations of stipends from unexhausted teinds up till 1790. Naturally, when the laws of the land were made exclusively by the propertied classes, the latter were never in any hurry to legislate against their own pockets. On the contrary, they made laws to relieve themselves of their burdens as teind-holders. When a proprietor of a large estate feued an area of arable land as feu superior to a feuar, the feuar was made to relieve the superior of the burden of teind payable upon that area of land.[2]

[1] *Autobiography*, p. 527. [2] *Records of Invercauld*, p. 45.

In the matter of Church buildings, when the superior feued a small piece of land for housebuilding, the feuar, by the Peterhead decision[1] in the House of Lords in 1802, became liable to be assessed upon his *real* rental for the construction and upkeep of ecclesiastical buildings and churchyards of the Church of Scotland, to the great relief of the landowners, particularly when a new church was required in the parish. In leases, the heritors regularly transferred to tenants certain of their duties as teind-holders, e.g. 'to pay School Master and Officer's dues and perform services to the Kirk, Manse, School, and Office houses of Newhills'.[2] By the Act of 1925 the heritors ceased to be liable for ecclesiastical buildings of the Church of Scotland, and so did the feuars, while churchyards were entrusted to Town and Parish Councils.

Already before the Reformation the poor were not getting their rightful share of teinds. Instead, they were granted by the Scottish Parliament in 1503 the right to beg, if they were crooked, sick, blind, or impotent; and in 1535 the poor were made to wear metal tokens, as permits to beg within their own parish. We quoted the famous *Beggars' Summons* of 1559, in which the poor clamoured for some of the wealth and buildings of the Roman clergy, as their share of the teinds.[3] After the Reformation, in 1579, it was made lawful to impose an assessment within a parish, levied upon means and substance, but in 1700 only three parishes had an assessment, and in 1800 ninety-six parishes. In 1592, and in 1597, the Kirk Session (with the help of the Town Council in burghs) was entrusted by Parliament with the administration of Poor Relief, and carried on until 1845. In times of distress the heritors augmented the slender resources of the Kirk Session with donations, and so avoided an assessment which would have fallen most heavily upon themselves.[4] In this way the

[1] Harlaw *v.* Heritors of Peterhead, House of Lords, 24 June 1802.

[2] J. Allan and Alexander A. Cormack, *Agriculture in Aberdeenshire in the Nineteenth Century*, Arbroath, 1927, p. 23.

[3] Alexander A. Cormack, *Poor Relief in Scotland*, Aberdeen, 1923, p. 90.

[4] *Aberdeen Journal*, 6 January 1830: 'Their Graces the Duke and Duchess

rights of the poor to a share of the teinds were lost in oblivion by the parliamentary transfer of responsibility to Kirk Sessions.

In the same way, from the Reformation to the Education (Scotland) Act of 1872, education was administered in each parish by the Kirk Session. We have to remember that, in those days, few were educated except some of the wealthy; there was no manhood suffrage and no force of public opinion. The poor labourers of the soil, while not exactly serfs, were nevertheless bound to the landowners by many servitudes.

The following Court Decisions throw a flood of light upon teinds in this century:

1734. *Heritors of Calder against the University of Glasgow.* p. 15739.

Those proprietors whose teinds were valued soon after 1633 had a smaller burden in teind fixed for ever to their land. In the eighteenth century rents began to rise as trenching and enclosing proceeded, and teind valuations grew in proportion. Accordingly these heritors of Calder claimed and were granted the following deductions from rent before the valuation of teinds was calculated:

1. For upkeep of tenants' houses.
2. For rent of extra houses required by a tradesman for his craft, and not necessary for the croft on which he lived.
3. For moss rights to cast and sell peats; moss was not a teindable subject.

These deductions seem perfectly fair in order that teinds when valued by the rental should not be too heavy a burden upon the land.

of Gordon, with that liberality and benevolence which distinguish them, ordered forty English blankets to be distributed among the poor in Tomintoul; a supply which is of the greatest consequence at present, as many poor families are suffering from cold, last season being so unfavourable for providing fuel. They also ordered the same quantity to be given to poor dwellers in the town of Huntly.'

1739. *Heritors of Calder against the College of Glasgow.* p. 15657.

When a loch was drained at a great expense, and the soil reduced to arable land, the same was found not liable to teind; and that this exception was competent not only to the original drainer for his expense, but to the singular successor for ever, wherever a rent arises by an extraordinary improvement; so far the titular has no claim thereto.

This decision was of the greatest importance for the encouragement of the trenching, draining, and cultivation of Scotland. Henceforth there could be no dread of teinds as a burden upon *novalia*, where an estate was already valued for teinds.

1745. *Sir John Maxwell against the College of Glasgow.* p. 15744.

In the process of valuation, the Commission found that, where a rent had been improved by inclosing, the old rent was to be the rule, and the improved rent or increase of rent deducted in the valuation; and that the increase of rent by expensive improvements was not a teindable subject.

It was also found that, if a tack was set for nineteen years with a grassum, then the nineteenth part of the grassum was to be added to the rent, in the valuation of teinds.

By the narrowest majority, the Lords found that multures, if commuted to grain annuals, had also to be deducted from the rent, before the valuation of teinds.

It is clear that heritors, who were so late (1745) in seeking a valuation of teinds, realized that their valuation would be high, and endeavoured to secure all deductions possible from the much increased 1745 rent.

1745. *Feuars of Dalkeith against the Duke of Buccleuch.* p. 15745.

By a narrow majority (7 to 6), and after a long hearing, the Lords found that no deduction was to be allowed for dung, in the valuation of teinds.

1747. *Maxwell against the Duke of Queensberry.* p. 15748.

The Lords found that neither poultry, paid by the tenant, nor the cess or land-tax, if paid by the tenant, was to be added to the rental for valuation of teinds.

1752. *Mr. Francis Adam against the Heritors of Cushney.* p. 15749.

As the Laird of Cushney had an unusually large number of poultry paid out of his estate, and valued in the tacks, the Lords slumped them to one hundred, to be deducted from the rental; services given at the *Mains*, or Home farm, were not to be added to the rental.

1757. *John Hay against the Duke of Roxburgh.* p. 15750.

No deduction was allowed in this case for the increased rental through the application of sea-ware. A deduction was given for the increased rent yielded by an orchard, and also for a small inclosure of increased value, with stone dykes.

1758. *King's College of Aberdeen against Lord Falconer.* p. 15753.

In 1494 Bishop Elphinstone received the teinds of Arbuthnot parish from the Red Friars' Hospital in East Lothian for King's College. In 1758 King's College claimed from the heritors of Arbuthnot transport of teind victual to Marykirk, because the heritors made their tenants pay rent in grain delivered in Marykirk. Up to 1756, King's College, for convenience, gave a tack of the teinds to the heritors. In 1756 the College claimed a valuation and got it. Whereupon the heritors declined to transport teind grain. The Lords found that the heritors were not obliged to transport teind victual to a town, because a titular was obliged to take away the *ipsa corpora* himself. Teinds belonging to Universities could be valued, but could not be purchased by the heritors, which was a loss to the heritors.

1759. *Heritors against the Magistrates of Inverness.* p. 15685.

The Lords decided that the land at Inverness reclaimed from the sea in 1746 by building and maintaining walls was not

teindable. The case of the loch at Calder was quoted, and the regular rule stated that ground reclaimed at great expense was not liable for teind.

1771. *John Kincaid against the York Buildings Company.* p. 15756.

The York Buildings Company acquired many estates forfeited after the 1745 Rebellion. In a process of valuation by John Kincaid, the Lords decided

1. That a deduction be granted from the rent of a waulk-mill.
2. That there be added to the rent the conversion monies for hens and carriage of coals.
3. That no deduction be given for lime made by the tenants for the use of their own holdings.
4. That no deduction be made for dung.
5. That no deduction be given for the upkeep of cottar houses, which were not excessive in number.

1771. *Hew Dalrymple against the Earl of Eglinton.* p. 15756.

The parks of Craig were let at a rent of £100 for 1769, and at £190 for every year thereafter of a nineteen years' lease. What was to be the rent for the process of valuation? The Lords found that the rent of £100, namely, the rent at the time at which the process of valuation began, must be the figure, and not the increased rent, *in futuro*.

This type of lease with rent increasing in the future was called an improving lease, and was very common from 1750 to 1860; an enterprising tenant was encouraged to take a rough piece of land at a low rent, with a view to his trenching it and draining it.

1772. *Charles Fullerton of Kinnaber against the New College of Aberdeen.* p. 15762.

The Lords granted deductions in the valuation of teinds for the waulk-mill, snuff-mill, ferryboats on the North Esk, houses, yards, and smiddy of the blacksmith; also for services and kains paid in kind, and for half a stone of butter.

1785. *Alexander Gordon against the Officers of State.* p. 15765.

The proprietor supplied his tenants with marl for their fields, and claimed a deduction therefor. The Lords granted him twenty per cent., because the marl was a temporary and uncertain improvement at the cost of the laird, and not like sea-ware or dung, where the advantage was of a permanent nature.

1796. *Sir Hugh Munro against the Officers of State.* p. 15771.

Sir Hugh allowed his tenants to dig peats out of a moss belonging to him, and but for this privilege the tenants would pay £50 less of rent, for which sum he claimed a deduction. The Lords unanimously repelled the claim.

It is evident that heritors tried every means possible to have their valuation of teinds calculated upon as small a rent as possible. This was natural, for that valuation was to remain a burden upon the estate for all time.

1796. *Rev. David Brown against Walter Hunter and other heritors of Crailing.* p. 15730.

The minister of Crailing claimed the teind of sown grass, as being included in his right to the vicarage teind of bog hay. He pleaded that he had lost teind of hemp, which used to be extensively grown, and was no longer a crop. There was no difference between sown hay and bog hay except in quality, and he deserved the extra quality as well as the cultivator, and that this was his compensation for the loss of hemp.

The heritors, in defence, admitted liability for vicarage teind of lambs, wool, lint, hemp, and bog hay. The minister had no claim to a teind of the new sown hay, which was grown on land in a high state of cultivation, and was far more valuable than bog hay. New hay was not grown from bog hay seed. Custom was the sole rule for vicarage teind, and the farmer could not be called upon to pay one-tenth of his seed and industry. The improvement of the country would be discouraged, and vicarage teinds increased unduly in value. Bog hay was never of much value. Teinds should not be

allowed to restrict proprietors in the cultivation and management of their land. Besides, the minister had drawn a teind of bog hay from Warlie meadow only, and not from any other parts of the parish.

Decision: The Court found that bog hay was of a different species, and that the minister had no claim to new sown hay. Teinds admitted of no *surrogatum*.

1800. *Rev. James Badenach against Colonel F. Ogilvie and others.*

Defendants tried to prove their lands teind-free, *cum decimis inclusis*. The Lords stated that the history of this exemption was very obscure. The infeudation of teinds to laymen was prohibited by the Lateran Councils of 1180 and 1215 and by the Provincial Councils of Perth in 1242 and 1296. These prohibitions did not affect rights previously granted, and attempts to alienate were often made later by inserting in the title-deeds *cum decimis inclusis et nunquam antea separatis*. If the claim were genuine, it had to be proved of great antiquity and that stock and teind were never separate. In this case there was evidence of separation, and the Lords found the land subject to teind.

1801. *Peterkin against the Earl of Moray.* Shaw's *Digest.* p. 1891.

The value of the right to dig peats was not to be deducted from the rent, if the tenants had not the right to sell peats.

1802. *Earl of Selkirk against the Officers of State.* p. 15778.

The pursuer was granted deduction for improvements of fencing and draining, but not for liming or farm buildings. used solely by the tenant in his cultivation of the land. This case dragged on from 1797 to 1802.

1804. *Carrick against the College of Glasgow.* p. 15782.

Carrick raised a process for valuation. The leases had run out, and the tenants were sitting at the old rents by tacit relocation. The titulars of the teinds held that the rents could be greatly increased in new leases. The Court found

that the rent payable by tacit relocation must be the rule for valuing the teinds. The College presented a reclaiming petition, and pleaded by the Act of 1633 that the teinds be calculated as one-fifth of the true worth of the land. The petition was refused.

In this case one almost suspects a ruse by the heritor to keep the rent low until a valuation of teinds was effected.

1806. *Scott against St. Mary's College, St. Andrews.* Shaw's *Digest.* p. 1891.

In a valuation, the following deductions from the proven value of lands were allowed:

1. Interest upon the price of lime supplied by heritor to tenant.
2. Interest of money advanced to improve a farm.
3. Value below the market price of lime allowed annually.
4. Expense of stone dykes erected within seven years of the process of valuation.
5. Extra rent for bridge over the Esk, and the rent of the farm, leased in 1785, was made the rent for purposes of valuation.

1816. *Maxwell against Blair.* Shaw's *Digest.* p. 1891.

It was not a relevant objection to a decree of valuation of teinds, that no separate valuation was put upon part of the lands then uncultivated, but now brought into cultivation.

This was of great importance to the trenching of Scotland. If a valuation of teinds were once made upon an estate, then the proprietor could go ahead and trench moorland without fear of any addition to his teinds.

1817. *Smyth against Officers of State.* p. 1891.

In a process of valuation, deductions for permanent improvements were allowed at the rate of $7\frac{1}{2}$ per cent. for seven years prior to the process, but no longer.

The extraordinary amount of trenching in Scotland hastened the processes of valuation, of which we find large

numbers at this period. As the valuations were accomplished, teind cases and disputes became very few in the nineteenth century.

1821. *Watson against Heritors of North Mavine.* p. 1892.

The rent for a teind valuation must be the *bona fide* rent of the land, and therefore, when lands and fishings were let, as in Shetland, for a *cumulo* rent, the teindable rent was only that effeiring to the land.

1867. *Richmond against Common Agent of Orwell.* p. 1896.

The teinds of an estate were valued in 1630. But a commonty was divided in 1774 among the neighbouring proprietors, and part allocated to this estate. The minister claimed teind off this part of commonty. The Court held that, as the terms of the valuation mentioned only parsonage teinds, the teinds of the commonty, being vicarage teinds of pasture, could not now be valued and added.

But at the end of the eighteenth century we have another valuable source of information about teinds. Sir John Sinclair, president, and Arthur Young, secretary, of the First Board of Agriculture, ordered surveys to be made of agriculture in all the counties of England and Scotland, and these were for the most part prepared by outstanding ministers of the Church. In the first series of surveys no plan was laid down, and the accounts were rambling and dissimilar in size and quality. For the second series a definite plan was laid down, and each writer had to report upon teinds. The following typical opinions are selected from widely distant counties in Scotland:

*View of the Agriculture of Midlothian*, by George Robertson, farmer. Edinburgh, 1795. p. 56.

'Tythes are unknown in this county; a circumstance with which the proprietors in particular have reason to be satisfied; as it is one of the many causes of rents being high, and the profits of farming low; from the greater competition incited by the removal of this obvious obstacle to the

complete cultivation of land, at least to any expensive improvements.'

*View of the Agriculture of Perthshire*, by the Rev. James Robertson, D.D., of Callander. Perth, 1799. p. 78.

'Some of the proprietors had ascertained the teinds payable out of certain estates, at a very early period, by a valuation of the rents, when very low; beyond which valuation these teinds cannot rise, according to the present rule of procedure. Other proprietors having neglected to fix or value their teinds, must pay stipend according to the present rent: whereby it frequently happens that the latter pay triple and perhaps thrice triple the stipend that the former pay, in proportion to their present rent. In many cases, stipends do thus affect the lands of different proprietors in the same parish very unequally and capriciously.

'If all the teinds of the parish happen to have been valued at a very early period, when the rents, especially of grass lands, were very low, the teinds, as fixed by that valuation, are, in some cases, now entirely exhausted; and notwithstanding that the rents of such parishes may rise in the same proportion with other lands in the same county, no addition can be made to the living, because there are no vacant teinds. The minister, perhaps of the next parish, may obtain an augmentation, although the real rent of his parish be no better than that of the neighbouring one, because his teinds have not been valued at all, or even valued at a later period. Instances of this are frequent in Scotland; and many more will occur in a few years. Sometime hence many of the livings will be stationary.

'The vexatious method of collecting tithes in South Britain is unknown in this country; and these unseemly disputes never felt, betwixt a minister and his parishioners, which are so injurious in some instances to the interest of religion, so great a bar to the operations of harvest and the general improvement of the country.'

*General View of the Agriculture of Fife*, by John Thomson, D.D., Minister of Markinch. Edinburgh, 1800. p. 98.

'Tythes, so loudly and so justly complained of as an intolerable evil, wherever they prevail, are unknown in this county. In one or two places indeed, tythes still continue to be exacted. But these are such inconsiderable spots, that the grievance is little felt, and deserves not to be mentioned. Exemption from this oppressive burden is not peculiar to Fife; it is very generally enjoyed through the whole of Scotland, and must be considered as a circumstance highly favourable to the progress of agriculture, and to the peace and prosperity of the country at large. The proprietor, in letting his lands, feels no obstruction from this quarter to the natural and reasonable increase of his rental. The activity of the tenant, in the cultivation of his farm, is not discouraged or checked by the apprehension that another will carry off a large share of the profits of his industry. And a fruitful and lasting source of misunderstanding, and often of ill blood, between the parochial clergy and the tenantry, so fatal to the respectability and usefulness of the clerical office, is removed.'

*View of the Agriculture of Peebles*, by Rev. Charles Findlater of Newlands parish. Edinburgh, 1802. p. 97.

*Early Valuation.* 'The power of valuing and for ever fixing the value of his teind, at a certain rate, howsoever much the lands may be subsequently improved in value, is a great privilege to the Scots landholder. Landholders have, by this valuation in money, not only obtained the justice of being at full liberty to improve the productive value of their lands, in the certainty of reaping to themselves the whole profit of their improvements, but they have obtained an iniquitous advantage, in having a perpetuity fixed in a manner which renders the bargain of gradually increasing advantage to them, and of proportionate increasing disadvantage to the other party.

'Scots landholders seem to have been slow in apprehending the value of the privilege conveyed to them. I am assured that few of the more ancient processes of valuation of tithe seem to have been raised at the instance of the proprietors; but at that of the Commissioners for ascertaining the King's annuity; or of the titular, to ascertain the surplus teind he was entitled to receive. From the barbarism of the country, it is likely few proprietors entertained any conception of their rents rising in consequence of improvement.'

*Comparison with England.* 'To the Scots landholder, privileged as he is [by early valuation] it may appear hard, that the tithe of the clergy should rise upon him, in consequence of improvements made solely at his expense, and to which they have contributed no share. But the clergyman in England will not be too hard upon the farmer, and may restrain the landlord from rack-renting. Without doubt the clergyman, as well as the proprietor, expects to reap where he has not sown; and upon a renewal of lease, will look for a rise in composition, as the other will for a rise of rent, proportioned to the increased value of the subject, though improved entirely by the proper outlay of the farmer's capital, and though neither have contributed one farthing to the improvement. And the public cares not whether he who reaps the immediate benefit shall be a fox hunter or a preacher. Extraordinary things are alone thought worth reporting; and the instances of oppression of the farmers by the clergy, which reach us in Scotland, candour must therefore dispose us to consider as the exceptions from the general rule.'

Obviously many complaints were coming from England; but this parson is out to see that England's clergy gets its due reward, and this should be fixed in land or grain, which has some permanent value, rather than in money. Tithes commuted in 1802 at high prices of grain [which might fall greatly] would be a big sum; farmers were frightened; landowners were frightened; so therefore commutation was postponed in England till 1836.

*View of the Agriculture of Kincardineshire*, by George Robertson, 1807, and published in 1813. p. 215.

'There are no Tythes properly so-called in this country, nor so far as I know do they exist anywhere in Scotland. Teinds have come in their place; or rather this may be a different name for originally the same thing. But these are now estimated on a different principle, and are levied in a different manner. Instead of being the tenth part of the produce, as the name should import, the Teind is now restricted to the fifth part of the rent; a circumstance much easier to be ascertained, and not so liable to variation. And notwithstanding the general higher rate of rent in Scotland than in England, the Teind will still not amount to a tenth part of the produce of the soil. This can only be the case when the rent is equal to half the produce, a case which can rarely happen.

'But what still further makes the Teind a lighter burden on landed property than the Tythe, is this, almost the whole Teinds in Scotland have been valued, a hundred years ago, perhaps or more, and have been restricted to that value; so that they cannot now be augmented, although the rent may be, as in most cases it is, doubled or trebled since the valuation took place. The Scotch landlord has another advantage still, in this respect. For however small the teind may be, compared with the tenth part of the actual produce, it is but in few cases that it is all demanded; as the living of the clergyman, which is augmented from time to time by the Court of Session, has not, except in a few parishes only, exhausted the whole teind. . . .

'For example, the parish of Benholme was in the year 1713 valued for the purpose of ascertaining the teind, in order to augment at that time the stipend of the clergyman, and it was found, after a minute investigation, in which the proprietors were particularly attentive not to allow any to undervalue their property, that the rent amounted to ninety chalders and five bolls of victual, and £323 15*s* 4*d*. Scots money.

The fifth part of this, or eighteen chalders one boll [289 bolls] and £64 15*s*. 0*d*. Scots [£5 7*s*. 11*d*. sterling] is, of course, the fixed teind for all time coming, from which the minister's stipend falls to be paid. At that period, the Lords of Session ordained eight chalders of this to be the stipend. . . . And it is at present in agitation to augment it to nine chalders and £50 sterling; making in all, according to the average rate of grain for the last seven years, besides £8 6*s*. 8*d*. for communion elements, £194 a year, leaving still about 100 bolls of inexhausted teinds in the hands of the proprietors. The present rent of the parish is about £3500, and the annual produce, as may be collected from the table of crop No. 6, will be fully worth £12,000. Hence, according to the Scottish system of teind, the clergyman, if the teinds had not been fixed down to the rental of 1713, might have had a stipend of £700; and according to the English system of Tythes, he would have had £1200.

*Stipends*: Though the divine right of Tythes is no part of the Presbyterian creed, yet as the workman is worthy of his wages, and as those who serve at the altar should live by the altar, so the clergy, in the Established Church of Scotland, are provided for as well in general, and commonly live as comfortably, as the great body of the clergy in any church in Christendom. They have also the additional satisfaction of receiving their stipends without any clashing of interests in temporalities with their parishioners, their salaries being fixed and determinate. This produces the happiest effect. The minister, as he is always respectfully styled, having no occasion to be viewed in any other light than in his official capacity, the connexion between him and his people is almost universally harmonious and cordial. Hence in his labours to instruct the ignorant and reclaim the vicious, there is no obstruction arising from a competition of worldly interests. Happy would it be for our clergy in our sister kingdoms were their salaries to be paid in the same determinate manner, instead of that perpetual fluctuation from

year to year, according to the state of the crop. This would prevent, what surely must be exceedingly unpleasant to themselves, that continual watching on their part, against the increasing desire in the cultivators, to disguise the produce, and curtail the tythes by every means in their power. Much has been said on this subject, as if it prevented the cultivation of the soil. For my own part, I have ever considered that, next to the proprietors, the clergy themselves are the greatest sufferers by the tythe system. The public lose nothing by it. The farmers make a profit.

'In the following table of the stipends of the clergy in this county will be seen the amount of the salary, as divided into victual and money, allotted for this purpose in each parish. All the clergy have likewise a glebe, a piece of land, more or less, as it may happen, in addition to their stipend. And they have uniformly a commodious habitation in which to reside, called the manse; built and kept in repair at the expense of the landed property. The value of both is here stated according to the report of the Assessor of the Income Tax in 1803. The manse and offices generally cost from £500 to £800 in building; and are thus more costly to the heritors than what, as stated by the Assessor, they may be supposed to be worth to the incumbent. Some augmentation may perhaps have taken place since the drawing up of this table, which was formed from information most readily afforded me by the clergymen themselves in 1807. In ascertaining the value of the victual, I have calculated both bear and meal at twenty shilling the boll. See Table No. 3, p. 218. The total average stipend, including manse, is £176 4*s.* sterling.

'Stipend is levied in this manner. The money part of it is paid by the different proprietors, generally at the term of Martinmas, yearly. The victual is paid by the tenants, between Christmas and Candlemas. And the minister's receipt for this to the tenants passes for so much rent to the landlords; so that the tenants are altogether relieved from

the burden. The proprietors, when they purchase their lands, pay only for the free rent, after deducting the stipend. Should there be any unexhausted teinds at the time of the purchase, they are valued at more or less according as the augmentation of stipend has been more or less recent. In no case are they valued at more than nine years' purchase; but the most general valuation is at five.

'By a recent Act of Parliament, stipends are to be all converted into victual, and can be augmented at intervals of not less than twenty years. The victual is not to be paid in kind, but converted at the medium rate of the preceding seven years. This rate is to be fixed annually by the sheriff of each county, from a report of a jury of farmers and victual dealers, enclosed for the purpose. One can hardly figure a less complex or more reasonable mode.'

*View of the Agriculture of Berwick*, by Robert Kerr, farmer at Ayton, 1809. p. 125.

'In some rare instances actual teinds are still exigible in kind by the lay impropriator. The writer of this report rents two small properties that are still liable to the corn tithe only in kind, but which he has bargained for with the lay impropriator at a fixed money rent or modus during the currency of the lease. So far as he can learn, this instance is almost solitary in the county, or at least exceedingly rare, and only attaches to exceedingly small parcels of land. Generally speaking, this county, like all the rest of Scotland, is free from tithes; at least in that shape that presses upon agriculture in a way that cannot be foreseen with any accuracy, and which consequently forms an insurmountable hindrance to improvements, and diminishes the rental value of lands which they attach to, in a vastly larger proportion than their own amount as a tax.

'Almost universally the tenants have nothing whatever to do with the tithes or teinds, whether as impropriated, or as allocated out of the impropriations for stipends to ministers.

In the leases of farm lands, the stock and teind, the land produce, and the tithe of that produce are let *in cumulo*, or conjointly and indivisibly, to the farmer, who has no concurrence with the clergyman of his parish, but to live with him in good neighbourhood, and to profit by his instructions and example.

'Sometimes landlords commit the payment of stipends to their tenants, to whom the minister's receipts become part payment of their rents. The tenant, by special bargain, may be bound to pay the stipend, in addition to the stipulated rent; but the quantum of this payment is so very nearly a fixed appreciable value, at the time of bargain, as to be easily intelligible, and never can produce any inconvenience to the tenant, or any dispute with his pastor. It does not increase with the ameliorations of his farm, neither does it abstract any of the means of fertility.'

*View of the Agriculture of Aberdeenshire*, by Dr. George Skene Keith. Aberdeen, 1811. p. 176.

'One remarkable fact founded upon the agriculture of a portion of the lands of this country demands the attention of the legislature. The lands in the immediate vicinity of Aberdeen have been improved at an expense unequalled in any part of the kingdom, from soil naturally very unfertile. At least 2000 acres have been trenched, manured, drained, inclosed, and highly cultivated, and not less than £10,000 of rent, and £25,000 of produce, are drawn from these lands. But if the rector of the parish, or the lay improprietor of the tithes, had been entitled to draw the tenth part of that produce, there is not the least reason to suppose that 200 acres would have been improved. Many of the spirited cultivators would have been well pleased to have had one-tenth of the produce for their profit. Most of them were enabled to improve their fields of granite, heath or sand, merely by having nothing at all, or at any rate, a few pence, to pay for their tithes. The British legislature may see that the value of the tithes should

be ascertained, and that those for unarable lands should be fixed and valued at a moderate rate, before waste lands can be taken into culture. The writer of this report wishes that all the tithes in England and Ireland were valued as they are in Scotland; that the English clergy may enjoy them at this value, without any diminution; and that the landed proprietors and farmers may derive all the benefit of their further exertions in cultivating waste lands, or improving more highly the lands which are now under cultivation. If the tithes were valued in quarters of wheat, barley and oats, instead of in money, the clergy would sustain no injury and agriculture might derive great advantage.'

*View of the Agriculture of Banffshire*, by David Souter, farmer. Edinburgh, 1812. p. 114.

'In no instance is the superiority of the Scots to the English jurisprudence more manifest than in tithes and poor rates. It is merely to be here observed that the tithes, with several provisions in favour of the proprietors, have been long almost undistinguishably lost in the rents payable to them. The provision for the parochial clergymen, exclusive of their glebe land and manses, is really made upon the tithes; but this circumstance is known to very few of the tenants, and in many cases is so completely lost sight of by the proprietors, that this provision for the support of gospel ordinances is very generally considered in no other light than as a burden upon their revenue; and with the government taxation and the parochial exactions, is ranked, almost without exception, by the well informed and the ignorant, as among the public burdens, without calling to mind that, at the original purchase of the lands, the tithes were subtracted from the rent, and not being the property of the landholders would be still separated on every transference of the estate by sale.'

The average stipend in Banffshire, manse not included, was £152 6*s.* 1*d.* at grain prices obtaining in 1811.

*General View of the Agriculture of Dumfries*, by Dr. Singer. London, 1812. p. 110.

'So favourable in itself, and in consequence of the depreciation of money, has this Act [1633] been to landholders, that, if all the tithes had actually been valued in money, soon after the above statute was passed, the amount of the whole would perhaps have been inadequate at the present time to the support of the clergy of one large county.

'But some landholders had the teinds of their estates valued in kind, that is, in victual, or other produce; others, not foreseeing the benefit of an early valuation of teinds, allowed this matter, through indolence or parsimony, to be neglected for above a century; and many decrees of valuation were lost in their conveyance from London after the Restoration, or went into oblivion in consequence of the burning of the teind office and records of the Commission in the year 1700.

'The principle of the Act 1633 was wise and equitable. The design was to fix the sum payable fairly as tithe; to prevent all future disputes and inconvenience, and to secure an equable and just payment in all time to come. But it could not be foreseen, that money would fall in value so excessively as it has done, otherwise it cannot be supposed that such an Act would have passed; it would not have been consistent with prudence or justice. . . .

'In the valuation of teinds in Scotland, one-fifth of the rent computed at the time when the owner of the lands chose to lead his process, is assumed as the teind; and this being once fixed in money, continues the same, not in value, but in the number of pounds, shillings and pence in all time to come. It may be readily conceived, therefore, under the influence of such a law, that the tithes are very moderate, and falling yearly in value. Out of this fund the modified stipend is first paid; and if the fund be low, the stipend must be restricted, as there is no other fund for payment. If there be a surplus, after payment of the stipend modified by the court

of teinds, it belongs to the titular or patron, unless the landowner has purchased a right to retain it at the moderate rate fixed on in the laws of Scotland, being either nine or six years' purchase, according as it is purchased from a titular with chartered rights, or from a patron. Patrons have right only in case there be no titular; and this right is in some measure gratuitous while they present to livings.

'In many parishes in this county the valued tithe is exhausted in payment of the modified stipend; and in some parishes the amount of the valued teind is so low as to fall short, very far, in payment of the stipend. In some other parishes the owners of land have not of old time led valuations, or have no evidence in the shape of a decree; and in these, as might be expected, the teind is more ample, being the fifth of the free modern rents, till a valuation is orderly led, and a decree obtained.

'In general the teinds, as a burden affecting landed property, must be considered exceedingly moderate; and yet that burden happens to lie so very unequally, that some landholders, weighing it on a comparative scale, have reason to complain of their share, as exceeding a fair proportion. But as no teind of corn is drawn off the fields in this country, and as every gentleman of landed property may raise a suit for valuing the teind, if not already done, a powerful stimulus to improvements is held forth, the whole returns of which fall to be divided betwixt the proprietor and the tenant of the soil.

'So low in many parishes are the tithes in Scotland, that it requires nearly the sum of £10,000 a year, granted by the late Act, 15th June 1810, to make up the smaller livings, where the teinds are defective, to £150 each.'

*View of the Agriculture of Renfrewshire*, by John Wilson. Paisley, 1812. p. 72.

'Tithes in kind, which have long been considered as of material injury to the farmers in England, are almost

unknown in Scotland. Prior to the Reformation, who had right to the tithes or teinds made that right effectual by drawing the teinds, or taking in kind the tenth of the actual produce. After the Reformation the clergy in Scotland were reduced to the state of mere stipendiaries, or entitled only to certain modified stipends, which were paid out of the teinds. . . .

'The valuation of teinds was directed by Charles I to be a fifth part of the yearly rent, and this regulation was of singular advantage to the landholder. A decree of valuation fixed his tithes or teinds, in all time to come, at a sum in money and grain; so that whatever improvements might be made at any future period, or however much the value of land might increase, the landholder never could be obliged to pay, either to the minister or titular, more than the amount of the teind ascertained by such decree of valuation. . . .

'The rapid rise of rents, and the progress of agricultural improvement, since the separation of Great Britain from the American colonies, have had the effect of making most of the heritors value their teinds. It is but justice to remark that the parties have been disposed to settle with each other in a fair and liberal manner. In several instances the heritors have got the teind fixed at 4*s.* per acre, and none of them, it is believed, pay more than 15*s.*'

*General View of the Agriculture of Roxburgh*, by Rev. Robert Douglas, D.D. London, 1813. p. 36.

'One or two clergymen have a right to some tithes, but have been in use, time immemorial, to accept a small sum in lieu of them. This is a loss to them, but a material advantage to the proprietors and tenants of the grounds, who are thereby freed from a vexatious obstacle to useful improvements.

'Since writing the above, I learn that a clergyman has actually drawn in 1796 the tithes of lamb, wool, green or new pulled lint, and natural hay in kind, from one part of his parish, and has farmed the tithes of these articles in another part.'

*Selkirkshire*, by the same author and of the same date, p. 254.

'Tithes are quite unknown.'

*The Code of Agriculture.* Sir JOHN SINCLAIR. London, 1832. p. 60.

'The mode of supporting the clergy in England, by paying them a tenth part of the produce of the land, in kind, was established in the Christian world, when the revenue of the Crown, and the rents of the proprietor, were paid in the same manner. But as the two latter are now commuted, no good reason can be assigned why the former should not follow the same rule. It is certainly highly expedient for the public interest, that an ecclesiastical establishment should be maintained, and amply provided for, in proportion to the opulence of the country. It is not the total amount that is in general objected to, but the mode of payment, which is considered highly injurious to agriculture, and a check to exertion. It is a great bar to improvement, because a spirited farmer, one more enlightened or more industrious than his neighbours, would pay more tithes, in consequence of his labour and outlay, while his receiving more profit would be a matter of great uncertainty; for though the produce might be more, the expense would be greater. Nothing can be more obnoxious than a bane, by which, when a person expends a large sum, either in reclaiming wastes or augmenting the fertility of land already cultivated, he should be under the necessity of yielding up one-tenth of its increased produce to a person, who has been liable to no share of the expense—who has run none of the risk—and who has sustained none of the labour attending the improvement.

'Should the cultivation of corn become more operose, and require to be carried on with greater care, attention, and consequent expense, the burden of tithes will be still more severely felt. At present, great loss is experienced, when they are exacted in kind, and conveyed, with much additional trouble and expense, not to the barns of the occupier, but to

those of the parson. A commutation of tithe, therefore, instead of its being exacted in kind, would be one of the greatest benefits that could be conferred on agriculture; and there is not the least difficulty in effecting it, by giving to the tithe-owner, either a proportion of the land, or by converting the tithe into a perpetual corn rent. Both these plans have been adopted in a variety of cases, by local Acts in England, and they ought now to be enforced as a general system. Others recommend giving a proportion of the rent (say 3*s*. or 4*s*. in the pound) to the tithe-owner; which they are inclined to think the most likely plan to obviate every difficulty. It would at least put an end to any uncertainty as to the amount of the demand. With tithes in kind, a large proportion of the straw, the chief material from which manure is obtained, is carried off the farm, and the means of preserving its fertility thus impaired. The same system prevails in Ireland, and is considered to be the principal cause of the periodical disturbances which have so frequently distracted the peace of that country. It is, however, only doing justice to the Irish clergy to observe, that this imposition is in general levied with moderation, when vested in their own hands; but it too often happens, that they leave their tithes to others, who, to enrich themselves, exact the utmost shilling which law or custom will authorise.'

These *Views of Agriculture*, written by ministers or distinguished farmers for the counties in Scotland, all insisted upon the difference between the incidence of teinds in Scotland and tithes in England. The reclamation of waste land was going ahead in both countries, but much faster in Scotland. The chief reason put forward was that the incidence of tithes in England was hampering the movement. A very able comparison was drawn up by James Anderson, an Aberdeenshire man, in 1796.[1] In Scotland the improvement of waste land was being made a regular business of the same

[1] James Anderson, *Essays relating to Agriculture*, vol. iii, p. 260.

nature with that of trade and manufactures, that a man might look up to with an assured hope of profit. It was in fact a species of manufacture itself; and a manufacture too, which, being of a more beneficial tendency, deserved to be encouraged above all others; it placed men on the land; it increased the food supply after the loss of the American colonies, and amid the Napoleonic wars; it gave wealth and stability to the state; and it created a healthy population.

In England the case was different; if waste land were made arable, then heavy deductions were made from the rent, in the form of tithes and poor's rates. Anderson estimated that it cost £60 to clear one acre of land. For this acre, an average rent was £3, being about one-third of the value of the crop. ('Ane to saw, ane to chaw, and ane to pay the laird wi' a'.') Thus the enterprizing proprietor made five per cent. upon his money, there being no teind, no poor rate, and no income tax or supertax. From the £3 rent in England there fell to be deducted perhaps six shillings in the pound of poor rate, plus one-tenth of the crop in tithe, equal to eighteen shillings in cash. Deducting these thirty-six shillings of burdens in England, we are left with a free rental of £1 4*s*. per acre, or two per cent. upon the outlay of £60, as compared with five per cent. in Scotland. It is no wonder that Scotsmen around the year 1800 rejoiced over the early commutation of teinds in their land. *Labor omnia vincit; sed sine lucro industria languit.* Or as Fénelon put it in French: *Il faut gagner les cœurs, et faire trouver aux hommes leur avantage dans les choses où l'on veut se servir de leur industrie.*

Another economic factor was at work in England; men of initiative were withdrawing their capital and their skill from the practice of agriculture to apply them to some form of new industry that would render them more independent members of society, and afford them more adequate returns for their industrious and industrial exertions. As the industrial revolution progressed in England, there was a diminution of agricultural produce.

In all the corresponding *Views of Agriculture* for the counties of England we find bitter complaints of the tithes that were levied in kind; they were a tax upon industry, and the mode of collecting was vexatious and expensive. A farmer upon good fertile corn land, held on a short lease, could estimate his tithes and offer less rent, even although the mode of collecting might annoy him. But upon a poor farm requiring much labour and manure, the tithe-holder removed a big share of the produce, and the farmer was not encouraged to try to improve; he withheld both labour and manure, and in a bad season the loss of one-tenth of a poor crop, sternly exacted, was a heavy one. Accordingly much land in England reverted to grass, and the income of the proprietors, through the inertia of the tenants and absence of improvements, was kept low, at a time when money was rapidly falling in purchasing power. The rents offered were reduced by more than a tenth of the produce, as might be expected. The loss of one-tenth of the straw and dung was a serious matter for intensive agriculture. The tithe-holder might put this tenth of straw and dung upon his own land, at the expense of the land tithed. Here is the comparative picture of Scotland in 1796:[1]

'In Scotland where corn-tithe is never drawn in kind, immense tracts of country, which, thirty years ago, were covered with heath, and totally unproductive even of grass itself, are now converted into fertile fields, that yield abundant crops of corn and grass, and which, if the tithe laws had there existed, must in all probability have continued unproductive till the end of time. This is a contrast which is very striking to everyone who travels these countries. It will not be alledged that this difference proceeds from the superior energy of the Scottish nation. This is obviously not the case; for it is well known that in mercantile and manufacturing enterprise, where no such checks on industry are experienced, the English clearly take the lead. And many of the men who have made a conspicuous figure in these agricultural enterprises in Scotland are actually Englishmen. The

[1] James Anderson, *Essays relating to Agriculture*, vol. iii, p. 157.

operation of the tithe-laws then upon the actual farmer is undeniably pernicious'.

In the old days the tithe was the easiest form of assessment, because there was no sale of grain, and no transport; each district was self-supporting, and the priest was fed off each district. But times were changed. There was heavy expense in collecting tithes off poor scattered farms at the various seasons of ripeness. It was an unpleasant task for a quiet studious parson and unbecoming to a minister of the gospel. The farmers paid reluctantly and with obstruction. An easy parson was always cheated and lost his due. If tacksmen were employed, their fee, which was heavy for the disagreeable work, reduced the parson's living. It was a bad method of providing for a minister. A bullying parson lived in affluence but lost all the love and respect of his people; he was detested and despised. His methods belied the doctrine that he preached, and his church emptied. The Christian bonds of society were broken. Farmers, too, acquired great cunning in cheating the parson.

The effect upon the public was, that, as the development of agriculture was hindered, the price of corn remained high.

The obvious solution was to convert tithes into a regular money payment. Accordingly in England in 1836 a system of commutation was introduced by which a rent charge, varying with the price of corn, was substituted for the old and cumbersome method of paying in kind. The value of the tithe rent charge in each parish was determined either by parochial agreement or by Commissioners appointed under the Tithe Acts. The amount was then apportioned on the land in the parish, and the actual amount payable varied each year with the price of corn. By the Tithe Act, 1891, 54 Vict. c. 8, the tithe rent charge was made payable by the owner and not the occupier, and the liability for payment, ceasing to be personal, was fixed on the land, which could be seized if necessary. Thus the teind system in Scotland, a poorer country, was luckily a far smaller burden upon

agriculture and its development than the tithe system in England.

Yet, although valuations of teinds began in Scotland as early as 1633, and farmers became gradually unconnected with this form of tax, the dread of liability for teinds persisted among tenant farmers for a long time. The following document shows how, in 1788, an outgoing tenant demanded from the factor of the estate a certificate of clearance of all teind dues on the farm given up: [1]

'The facter represented to the meeting that Miss Mackintosh, possessor of the Mains of Kincraig, made a claim for one-tenth of the Crop of Kincraig for the year 1786 in name of Teind, according to the practice of the Country, or otherways, that an acknowledgement should be given her, that she got no such Teinds, and would not be obliged to pay Teinds at her removal. The meeting authorize their facter to give Miss Mackintosh an acknowledgement to the above effect'.

[1] Private document lent by Miss I. F. Grant, author of *An Old Highland Farm*.

CHAPTER IX

## MODERN LEGISLATION AND TEINDS

IN the majority of the parishes of Scotland teinds were commuted by a process of valuation before the year 1800. As rents increased in the eighteenth century, it was to the advantage of a landed proprietor to lead a process of valuation as soon as possible. Some valuations of teinds in outlying parishes had still to be made, with the result that, in such late valuations, when rents had been increased three or fourfold since 1633, one-fifth of the rental constituted a very considerable teind out of which stipend could be paid.[1] The rental of Forfarshire rose from £14,303 in 1656, when Cromwell ordered a valuation of lands for taxation purposes, to £96,112 in 1794, nearly a sevenfold increase in 138 years.[2] In such cases a suitable stipend was fixed for the minister of the parish from the valued teinds. In the seventeenth century few ministers were granted more than the minimum of eight chalders or eight hundred merks.

But no allowance had been made for a fall in the value of money. So long as parishes remained self-supporting in food and raiment, so long as there were no roads for transport by cart, but merely tracks for pedestrians and pack-horses, there was probably no great fluctuation in the price of grain. But in the eighteenth century, with new roads, new industries, and new towns, prices and money value began to fluctuate in accordance with economic law. The general tendency was for money to fall in value, and no provision had been made for automatic augmentation of the stipend of ministers. In 1790 the Court of Teinds, under pressure from the annual Assemblies of the Church of Scotland, reversed its decision, and agreed to grant augmentations from unexhausted teinds. There was, naturally, great rejoicing among the clergy.

[1] See *Records of Invercauld*, p. 227, for Decreet of Valuation in 1809.
[2] *General View of the Agriculture of Forfar*. Roger, Edinburgh, 1794.

'Since the year 1791, the livings of all the ministers in this country have been augmented, and their manses rebuilt or repaired'.[1]

As a matter of fact inquiry shows that most of the present manses of the Church of Scotland date back to this period; they are now old buildings, with odd additions that make them far from compact and difficult to work, and much below modern standard requirements. Large tracts of land were being cleared for the plough, new farms were being established, rents were rising, and the heritors gave of their increased income to the Church for stipend and manse. Why was there so much trenching of land in Scotland about 1800? After the American War of Independence, when the best of the American colonies broke away from Britain, and during the long struggle with Napoleon, food was scarce and imports restricted. On the other hand, with the development of industries, the population was increasing, and more food was required.

The minister of Newlands describes the situation regarding augmentations in 1802:[2]

'It was an established maxim that without a fresh Commission from Parliament, the Court could grant no subsequent augmentation to livings which had been augmented by it since 1707. In consequence, however, of a change of views in the Court, as to the extent of this Parliamentary Commission, as also of the public opinion in regard to the slenderness of the clergy's provision, the Court has, within these ten or twelve years bypast, departed from its usual maxims, and has shown a willingness to grant augmentations, whenever necessary, wherever there are funds for the purpose.

'The clergy have not been backward in embracing this favourable opportunity; and it is believed that, immediately, if not already, the medium of Scots stipends will reach to £100 or 100 guineas, besides the dwelling-house and glebe. The livings of the Tweeddale clergy have all received augmentations, since this

[1] *View of the Agriculture of Renfrewshire*, 1812, p. 77.
[2] *View of the Agriculture of Peebles*, 1802, p. 97.

change of maxims, with the exception of Kirkurd, where the teinds have all been valued in money, and are all exhausted in payment of the present stipend.'

In order to define the law on the subject, and to prevent the clergy from coming forward to seek augmentations too frequently, an Act was passed in 1808 restricting applications for augmentation to periods of twenty years. It was also enacted that any further augmentations should be made in grain, to be converted into money at the county fiars prices,[1] and that all stipend should be paid in money. Naturally, in the early nineteenth century, during the Napoleonic wars, grain retained its economic value better than money, and it was to the advantage of the clergy to have stipend estimated in grain, and then converted into, and paid in money. The following are the sections of the Act that interest us:

*An Act for defining and regulating the powers of the Commission of Teinds, in augmenting and modifying the Stipends of the Clergy of Scotland* (48 George III, c. 138), 30 June 1808.

*Augmentation of stipend after twenty years.*

'No stipend which shall be augmented or modified by a decree after the passing of this Act shall be again augmented or modified until the expiration of twenty years from and after the date of such decree of modification thereof.'

*Augmentation to be wholly in grain.*

'Every stipend which shall be augmented after this Act shall be wholly modified in grain or victual, even although part of the whole thereof shall have been previously modified in money, or although part of the whole of the teinds shall be money teinds, &c.'

*Money stipends to be converted into grain or victual at fiars prices.*

'In the case of every decree of modification which shall be pronounced after the passing of this Act as aforesaid, it shall

[1] The origin of *fiars* is much disputed. It is said to be derived from the Latin *forum*, a market; hence the market price. See *Aberdeenshire Fiars Courts and Prices*, in the *Miscellany of the New Spalding Club*, vol. ii, p. 3.

and may be competent to the said Lords and Council of Session, as Commissioners aforesaid, and they are hereby authorised and required, to convert the said money stipend or money teind into grain or victual; save and except as aforesaid; and to make such conversion into grain or victual according to the fiar prices of the kind or description of grain or victual into which the same shall be converted, as appearing from the fiars of the county or stewartry struck for each year in virtue of authority from the sheriff or stewart in which the parish shall be situated, upon an average of such fiar prices for seven years preceding the date of the decreet of modification, and exclusive of that year in which such decreet of modification shall bear date.'

*Ministers to receive stipend in money according to the fiars prices.*

'It shall only be competent for the Lords of Council and Session, as Commissioners aforesaid, to decree the value of stipend to be paid, or for the ministers to receive the same in money, according to the fiar prices of the kind or description of grain or of victual into which the same shall have been modified, as appearing from the annual fiars of the county or stewartry in which the parish, the stipend of which shall have been so modified, shall be situated, struck in virtue of authority from the sheriff or stewart, for that crop or year for which such stipend modified in grain or in victual shall be payable.'

*Conversion at highest fiars prices.*

'Where there shall have been or shall be different rates of annua fiar prices for any county or stewartry, the said conversion from money into grain or victual, and from grain or victual into money, in all of the cases aforesaid, shall be made according to the highest annual fiar prices struck in virtue of authority from the sheriff or stewart for the said county, stewartry, district or place.'

*Right of surrendering teinds not to be taken away.*

'Provided always . . . . that the right of any heritor to surrender his valued teind in place of subjecting his lands to the amount of the stipend localled upon them shall not be taken away by what is herein enacted.'

Thus, as circumstances warranted it, as a rule, upon an increase of the cost of living the minister could claim more and more of the teinds enjoyed by the titular or landholder. The appeal for increase was called a 'Process of Augmen-

tation', and the titular or proprietor was called before the Court to arrange and agree to an increase of stipend out of the unexhausted teinds. The Court was influenced by such considerations as the size of the parish, the amount of the remaining teind, the growing population, the increasing duties of the minister, the cost of living, &c., and made an increase accordingly. The minister could take action for stipend against *one* heritor, who had recourse against the others. The Court, in modifying stipend, often localled it also—that is to say, by consulting all the heritors, it fixed the proportion payable by each estate in the parish. Nowadays a common agent is employed to levy teind fairly on all heritors. Up to 1808 the valuation was made in grain or money, but afterwards always in grain. As a rule, stipend was estimated at so many chalders, each of sixteen bolls of victual, half oats half barley. Stipend ever remained the first charge upon teinds, a *debitum decimarum*, a *debitum fructuum*. Although the amount of stipend was fixed in grain, it was made payable in money according to the fiars prices which are fixed for each county annually, about the month of February. The landholder paid, and no demand was made on the cultivator unless the landholder had bound him in his lease to pay the stipend, in which case the stipend became part of his conventional rent. If the landholder failed to pay, then the minister could claim from the rent of the tenant, who was liable in such a case to pay the landholder the balance only of the rent due. Here is an example from the parish of Rathven in Banffshire[1] in 1814: 'Mr. Donaldson [minister] intimates that he is to raise a summons of augmentation of his stipend. His present stipend is 72 bolls meal, 72 bolls bear, and £33 6*s*. 8*d*. in money, exclusive of £8 6*s*. 8*d*. of Communion Element money. He is to crave an augmentation of 7 chalders',[2] 1882. 'The present stipend at Rathven is 18 chalders, half meal and half barley. Intimation is

[1] William Cramond, *The Church and Churchyard of Rathven*, Banff, 1885.
[2] A chalder equals 16 bolls.

made to the Presbytery that an augmentation of 6 chalders will be craved.' Evidently the minister had modified his demand slightly. Here is a modern example reported in the press:

'The Court of Teinds, consisting of the Lord President, and Lords Cullen, Sands, Blackburn, and Constable, yesterday granted the application of the minister of the parish of Keith for an augmentation of two and a half chalders. The stipend was last modified in 1900 at 26½ chalders, half meal and half barley, with £12 for communion elements. In 1924 the chalder was worth about £25, and the money value of the stipend then was nearly £675. Of an area of 36 square miles, the parish was somewhat scattered, was the largest in the Presbytery, and included within it the market town of Keith. The population numbered 6359. There were 1585 communicants on the roll, 310 pupils in the Sunday school, 200 members in the Woman's Guild, and a Bible class of 70.'

The small customary or vicarage teinds disappeared towards the end of the eighteenth century, for the simple reason that lambs, wool, lint, and bog hay ceased in very many parishes to be crops. Dr. George Skene Keith reported in 1811:[1]

'The small tithes were paid in many parishes, till within these 50 years; and in some parishes only 30 years ago. Before the union of the kingdoms in 1707 they were a great support to the clergy, as the Scotch wool, particularly in Aberdeenshire, was of excellent quality, and bore a high price on the Continent. But the exportation of Scotch wool being prohibited by the union of the two kingdoms, the value of the small tithes fell, with the decrease of both the price and quality of wool; and the clergy

[1] *View of Agriculture of Aberdeenshire*, 1811, p. 175. That the vicarage tithes were disappearing in England in the seventeenth and eighteenth centuries is evident by the issues of *Tithing Tables* for the use of parsons and vicars, 'shewing of what things tithes are or are not due, either by Common Law, Custom, or Prescription', e.g. *Decimarum et oblationum tabula*, by W. C. Bach, London, 1671; *A Tything Table*, by W. Bohun, In the Savoy, 1732. I have not been able to find any such tables printed in Scotland; nor have I met with any case in Scotland of the voluntary restoration of teinds to a church by a well-disposed teind-holder; Scotland, of course, was a poorer and a more unsettled country in those days.

were obliged to get an addition to their livings out of the great tithes. The vexatious office of collecting the small teinds is now happily abolished.'

In the rush for augmentations, it was found that in some poor parishes where there was little arable land, or where the teinds had been valued early, no augmentation could be granted because the teinds were exhausted. Accordingly, in 1810, Parliament came to the rescue with an Act for augmenting parochial stipends in certain cases in Scotland.[1] 'In consequence of the depreciation of the value of money, the stipends of some parochial ministers have become inadequate to their support and maintenance, and on account of the valuations of teinds which have taken place, no funds exist out of which future augmentations of such stipends can be granted.' And so Parliament ordered a sum of £10,000 to be paid yearly to the Church of Scotland to make the stipend a minimum of £150 per annum in such cases. But teinds in a parish had to be exhausted before relief was given from this fund. Such parliamentary augmentations were ordered to be paid half-yearly by the Receiver-General, who retained one shilling per pound during the first year to pay for the expenses. This Act drew the following comment from Dr. George Skene Keith, minister of Keithhall, Aberdeenshire:[2] 'The Clergy of the Church of Scotland are placed in that happy mediocrity between opulence and poverty, which calls on them to look for the respect of their people, only from the purity of their morals, and the cultivation of their intellectual powers.'

In 1824 Parliament had to vote further financial aid to parishes whose teinds were exhausted. On this occasion a different economic factor was at work. The price of grain fell after the Napoleonic wars, and stipends, converted from grain to money, fell accordingly. Accounts of poor parishes with less stipend than £150 were ordered to be submitted to

[1] Act 50 George III, c. 84.
[2] *View of the Agriculture of Aberdeenshire*, p. 177, 1811.

Parliament every five years for augmentation. Likewise, if stipends fell to less than £200 per annum without a manse and glebe, such parishes were also to be considered by the Court of Teinds for help, and reports upon these were to be submitted every five years for an increase, if necessary. For this purpose a further sum of £2,000 per annum was set aside by Parliament.[1]

In 1825 a very slight change was made, as under, in Teind Court administration:

'All actions concerning teinds . . . shall be brought before, and be decided by, *one or other of the divisions* of the Court of Session, who shall be held as a quorum of the said Commissioners. . . . The teind clerk shall continue as heretofore to officiate as clerk.'[2]

In 1824 and 1825[3] forty-three chapels were instituted in the Highlands and Islands of Scotland, where there was no provision for religious observances, and the ministers are paid out of Parliamentary Funds to the amount of £5,040 per annum. A complete list of these churches can be found on p. 55 of the Church of Scotland (Property and Endowments) Act, 1925.

By the Court of Session Act, 1868, the Judges of the Inner House of the Court of Session and the Second Junior Lord Ordinary compose the Court of Teinds, five to form a quorum, including the Lord Ordinary. This Court of Teinds fixes the valuation of unvalued teinds, and may grant augmentation of stipend at the statutory intervals of twenty years.

There is no other legislation for teinds until we come to the above-mentioned Act of 1925. We have a lapse of a century without legislation. But during that century the Church of Scotland by law established has ceased to occupy that unique position as a religious organization which it held in Scotland one hundred years ago. Up till 1845 the Church of Scotland administered the Poor Law of the land, and made the necessary financial provision for the poor, notably from

[1] Act 5 George IV, c. 72. [2] Act 6 George IV, c. 120.

[3] Act 4 George IV, c. 79 and Act 5 George IV, c. 90. See Appendix II for redemption of these annual payments by the State in 1927.

its church-door collections. From 1845 to 1894 the Kirk Session of the Church of Scotland was the only Church Court allowed by law to elect a number of members to the composite Parochial Board, which took over the management of the Poor Law in 1845. This concession was made in order to preserve continuity in administration, but this privilege was lost in 1894, when Parish Councils were established. Again, up till nearly the end of the nineteenth century, the various courts of the Church of Scotland dealt with moral delinquencies throughout all the parishes in Scotland. These courts imposed fines and punishments. But changes came. At the Disruption in 1843 the Church of Scotland was rent asunder, and a Free Church, unconnected with the State, appeared in nearly every parish alongside of the Church of Scotland. By the Roman Catholic Relief Act in 1829 [1] more freedom was given to Catholics, and by 1847 all restrictions upon them were withdrawn by Parliament. Since then the Catholics have never ceased to grow more numerous and powerful in the land, particularly with the help of Irish immigration in the south-west. Other sects, such as the Congregationalists, the Baptists, the Evangelical Union, the Methodists, the Unitarians, the Salvation Army, and the Plymouth Brethren have reduced the proportionate numerical strength of the Church of Scotland. The general consequence is that there is an increasing proportion of the population with no interest in maintaining this church to which they are forced to pay ecclesiastical assessments. While a great many outside the Church and inside the Church are indifferent on this point, the small heritor, owning merely his own house, has in recent years shown grave objection to maintaining a manse for a church minister in whose work he is not in the least interested, or of whose religious beliefs he does not approve.

Further, it is being considered unjust that one sect or church in Scotland should be subsidized off the fruits of one industry, namely agriculture, while the other sects or churches

[1] Act 10 George IV, c. 7.

might be able to put forward very good claims for equal financial support from the State, whether in the form of Teinds, Exchequer Grants, or Civic Endowments.[1]

Again, discussions have been proceeding for many years between the Church of Scotland and the United Free Church of Scotland of a Basis and Plan of Union. While the Church of Scotland is proud of its long connexion with the State, the United Free Church is founded upon complete religious liberty. Accordingly two Acts have been passed. By the Church of Scotland Act of 1921 the Church of Scotland achieved a large measure of spiritual independence, 'but always in agreement with the Word of God and the fundamental doctrines of the Christian faith, contained in the said Confession of Faith, of which agreement the Church shall be the sole judge'. So much for spiritual freedom. But to meet the idea of the United Free Church, of financial freedom from the State, further legislation was necessary.

Long before definite negotiations for the union of the two large churches in Scotland began, it was the policy of the Church of Scotland to have stipend from teinds permanently converted into money; the Church was not happy in its intimate connexion with, and dependence upon, agriculture, landowners, and feuars. Thus in 1895 the Committee of the Church on Fiars Prices summed up its criticism for the Assembly thus: 'In actual working it may be questioned whether any mode of payment could be invented more uncertain in results, more antiquated in principle, and in operation more troublesome to all concerned.'

With the break-up of large estates since the War, the system became still more complicated. And so in 1920, after prolonged negotiations between a Committee of the Church of Scotland and representatives of the landed proprietors, the Teinds Bill (1920) was drafted and introduced into Parliament by the Secretary for Scotland. The Commission

[1] Church of Scotland (Property and Endowments) Act, 1925, p. 53. Payments out of the Consolidated Fund.

of the General Assembly however, by a small majority, disapproved of the Bill, and it had to be dropped in Parliament. It is probable that the Church of Scotland now regrets its opposition to that Bill, for the commutation price offered for teinds therein was high. The main purpose of the Bill was to provide for the standardization of stipends payable out of teind, by fixing their value in money for all time coming, and for the redemption by the heritors of the stipend as standardized. The standard value of victual stipend was fixed at the average value for the years 1906 to 1912 with an addition of 48 per cent. in lieu of the rise of prices during the War. One final augmentation of stipend was to be allowed in parishes where teinds were unexhausted. The period of the redemption annuities was limited to 50 years as a maximum. Why did the Commission of the General Assembly reject this Bill? Because it did not approve of the permanent value price of the chalder, namely £21, on an average, for 16 bolls of grain, as the basis of negotiations with the landowners. By the 1925 Act the ministers have had to accept considerably less, with no compulsory redemption.

Nothing further was done until April 1922, when Mr. Robert Munro, Secretary for Scotland, appointed a Committee of five—Lord Haldane of Cloan (chairman), Sir Joseph P. Maclay, Sir James M. Dodds, the Very Reverend Sir George Adam Smith, and Mr. John Prosser, Crown Agent—'to enquire and report as to the existing law as affected by the Church of Scotland Act, 1921, and as to what further legislative amendments or readjustments—particularly in relation to the tenure and enjoyment of the property and endowments of the Church of Scotland—are necessary or expedient in view of the coming into force of the said Act, in order to facilitate Church Union as contemplated therein.'

The primary union contemplated was with the United Free Church of Scotland, and the most delicate part of the task of the Committee was to frame an alternative scheme for fixing the permanent value of the chalder acceptable to

ministers and landed proprietors alike. The Committee adopted the framework of the Bill of 1920, and proceeded to make alterations in details, with the object of abolishing the whole system of teinds, so that stipend should no longer be paid by landowners to ministers, but that landowners should redeem the burden of teind, and that ministers should receive stipends, fixed in amount, from a purely ecclesiastical body. Many of the recommendations of the Committee, published in 1923, were embodied in the Church of Scotland (Property and Endowments) Act, 1925, the important provisions of which, regarding teinds, are as follows:

1. Subject to the provisions of this Act, every stipend which in any way or to any extent depends upon fluctuations in the price of victual (hereinafter in this Act referred to as 'victual stipend') shall cease so to depend, and shall be payable only in money at the standard value thereof as hereinafter defined.

2. The value in money of victual stipend shall for each county in Scotland be determined by adding to the former county average value of the different kinds of victual in which such stipends are localled an increase of five per centum of that average value, and for the purposes of this section the former county average value of any kind of victual shall be deemed to be the average value of that kind of victual for that county for the fifty years 1873 to 1922, as ascertained.

3. The date of standardization of a stipend shall be the term of Martinmas which shall first occur not less than six months after the date when the benefice becomes actually vacant or is deemed to have become vacant by election or by notification as hereinafter provided. In the case of a benefice which is actually vacant at the passing of this Act the date of standardization shall be the term of Martinmas, nineteen hundred and twenty-five.

4. Any minister who at the passing of this Act is entitled to a victual stipend may elect that the stipend shall be standardized, and if he so elects he shall intimate his election in

writing in the form set forth in the Third Schedule to this Act or in a similar form to the heritors to the Clerk of the Presbytery and to the General Trustees, and in such case the benefice shall for the purposes of this Act be deemed to have become vacant by election at the date of the said intimation.

5. As from the date of standardization any stipend which has been standardized under the provisions of this Act shall be payable by the heritors to the General Trustees half-yearly at the terms of Whitsunday and Martinmas, each half-yearly payment being in respect of the half-year preceding the date of payment, subject to the following exceptions, namely—

(*a*) that the first half of the standardized stipend for the year beginning on the date of standardization shall not become payable until the term of Lammas in that year; and

(*b*) that the second half of the standardized stipend for that year shall not become payable till the term of Candlemas in the following year.

6. (1) On the passing of this Act the present law relating to augmentation of stipend shall cease to have effect without prejudice to any application for augmentation competently made before such passing or to anything following on such application or done therein.

(2) The minister or the General Trustees as the case may be to whom a stipend or a standardized stipend is payable may

(*a*) if not less than twenty years shall have elapsed since the date of the last application for augmentation of the stipend; or

(*b*) upon the expiry of twenty years from the date of the last application for augmentation of the stipend or upon the expiry of ten years from the passing of this Act, whichever of these two events shall first occur;

apply to the Lord Ordinary to find whether there are surplus teinds available for an augmentation. No such application may be made after the expiry of eleven years from the passing of this Act.

(3) If the Lord Ordinary (whose decision shall be final and not subject to review) finds that there are surplus teinds so available, the minister or the General Trustees, as the case may be, shall be entitled to receive as from the first term of Martinmas following the date of the application an augmentation according to the following scale:

(*a*) Where the stipend as last modified by the Court of Teinds does not exceed twenty-five chalders, an augmentation of six chalders; and

(*b*) Where the stipend as so modified exceeds twenty-five chalders but is less than thirty chalders, an augmentation of five chalders; and

(*c*) Where the stipend as so modified is thirty chalders or upwards, an augmentation of four chalders.

The foregoing augmentation of six, five or four chalders, as the case may be, shall be converted and localled in sterling money according to the standard value, the order of allocation being in accordance with the present practice.

If the amount of the available surplus teinds as ultimately ascertained in the localling of the augmentation among the heritors is insufficient to meet the foregoing augmentations, the augmentation shall be limited to the amount so ascertained.

(4) As from the date when a minister or the General Trustees, as the case may be, becomes or become entitled to an augmentation under this section, the amount of the augmentation shall be added to the stipend and shall be payable and recoverable in like manner.

(5) An augmentation under this section shall come in place of all future rights of augmentation and shall be final.

(6) In the event of the Lord Ordinary finding that there are no surplus teinds available for an augmentation, neither the minister nor the General Trustees shall be entitled to make any further application.

7. There shall be prepared by the Clerk of Teinds for every parish in Scotland a teind roll specifying in sterling money

(*a*) The total teind of that parish; and

(*b*) The amount of that total applicable to the lands of each heritor; and

(*c*) The value of the whole stipend payable to the minister, so far as payable out of teinds, including vicarage teinds payable as stipend and surrendered teinds so payable; and

(*d*) The proportion of that value payable by each heritor in the parish.

8. Where the standard value (as shown by the teind roll of a parish) of the stipend exigible from the teinds of any lands of a heritor in that parish which are comprised in one entry in the teind roll exceeds the sum of one pound—

(1) The amount of such standard value shall by virtue of this Act be constituted as at and from the first term of Whitsunday or Martinmas which shall occur after the date when the teind roll becomes final a real burden (in this Act referred to as the 'standard charge') on the lands from the teinds of which the said stipend is exigible in favour of the General Trustees preferable to all other securities or burdens not incidents of tenure;

(2) The amount of the standard charge shall be payable by equal half-yearly instalments at the terms of Whitsunday and Martinmas, each half-yearly instalment being in respect of the half-year preceding the date of payment, and the said instalments shall be recoverable by the same means and in the like manner as any feu-duty out of the said lands would be recoverable;

(3) The standard charge over any lands may at any time after the completion of the teind roll be redeemed by and in the option of the heritor of those lands or other person liable in respect of the standard charge either (*a*) for such consideration or in such manner as may be agreed upon between the person liable and the General Trustees, or (*b*) at any term of Whitsunday or Martinmas after three months' notice either (1) by payment to the Trustees of such a sum as would if invested at

the time of payment in Consolidated $2\frac{1}{2}$ per cent. annuities produce an annual sum equal to the standard charge, or (2) by transfer to the General Trustees of such an amount of Consolidated $2\frac{1}{2}$ per cent. annuities as would produce an annual sum equal to the standard charge;

(4) Upon the redemption of the standard charge as aforesaid any claim upon the heritor or other person in respect of such standard charge shall cease and be extinguished, and the lands from which the same was exigible shall be disburdened thereof in all time coming, and an entry to that effect shall be made in the teind roll, which shall be sufficient evidence of the discharge of the burden.

9. A standard charge shall from its constitution continue a real burden on the whole of the lands subject thereto, and on every part of those lands notwithstanding any disposition of the lands or any part thereof unless and until intimation of an allocation of the standard charge has been made in writing by the General Trustees and the disponer or his representatives to the Clerk of Teinds, who upon receiving such an intimation shall forthwith make the necessary entry in the teind roll.

If as the result of any such allocation the portion of a standard charge so allocated upon the lands disponed or remaining a real burden on the lands retained by the disponer does not exceed one pound, the disponer or his representatives shall within three months after the date of the entry in the roll redeem the same by payment to the General Trustees of a sum equal to the amount so allocated or remaining a burden multiplied by twenty; and if the portion of the standard charge so allocated or remaining a burden exceeds one pound but is less than fifteen pounds, that portion of the standard charge shall as from the date of the entry in the teind roll be increased by five per centum.

10. Subject to the provisions of the next succeeding section

of this Act, where the standard value (as shown by the teind roll of a parish) of the stipend exigible from the teinds of any lands of a heritor in that parish which are comprised in one entry in the teind roll does not exceed the sum of one pound:

(1) The heritor or other person liable in payment of the said stipend shall redeem the same either

(*a*) at the first term of Whitsunday or Martinmas which shall occur not less than three months after the date on which the teind roll of the parish becomes final for such consideration or in such manner as may be agreed upon between the person so liable and the General Trustees; or

(*b*) by payment to the General Trustees at the said term of Whitsunday or Martinmas of a sum equal to the standard value of the said stipend multiplied by eighteen; or

(*c*) by payment to the General Trustees, along with each half-yearly payment of the said stipend during a period of eighteen years commencing at the said term of Whitsunday of Martinmas, of a redemption instalment equal to seventy-five per centum of the half-yearly payment of the stipend, which redemption instalment shall be recoverable by the General Trustees in the same manner as the half-yearly payment of the stipend;

(2) Upon the redemption of a stipend as aforesaid any claim upon the heritor or other person in respect of such stipend shall cease and be extinguished, and an entry to that effect made in the teind roll shall be sufficient evidence of the redemption.

11. Where the standard value (as shown by the teind roll of a parish) of the stipend exigible from the teinds of all the lands of a heritor in that parish, whether those lands are comprised in one or in more than one entry in the teind roll, does not exceed the sum of one shilling, any claim for or in respect of the stipend upon the heritor or other person liable in pay-

ment thereof (other than a claim for payments already due) shall, notwithstanding any law or practice to the contrary, cease and be extinguished as at the first term of Whitsunday or Martinmas which shall occur not less than three months after the date on which the teind roll of the parish becomes final.

12. Notwithstanding anything contained in the Act of the Scots Parliament, 1693, c. 23 (an Act renewing the commission for plantation of kirks and valuation of teinds), or in any other enactment or in any charter, grant or deed, it shall be lawful after the passing of this Act for the titular or any other person having right of titularity to sell surplus teinds on such terms as may be agreed upon between him and the heritor.

Nothing in this section shall prejudice or affect the provisions of the Acts of the Scots Parliament, 1633, c. 17 (anent the rate and price of teinds), and 1690, c. 23 (concerning patronages) or any other enactment at present in force authorizing the sale of surplus teinds.

13. (1) The charges and payments described in the Seventh Schedule to this Act, and any other payments to or on behalf of the Church or the General Assembly or any committee or institution of the Church or any minister which at the passing of this Act are charged on and payable out of the Consolidated Fund of the United Kingdom, shall thenceforth be paid to the General Trustees in such manner as may be directed by the Treasury.

(2) The Treasury may at any time contract for the redemption of all or any of the payments referred to in the preceding subsection by payment to the General Trustees of such capital sum or sums as may be agreed between the Treasury and the General Trustees. (See Appendix II.)

But one very important recommendation of the Committee was not acceptable to Parliament, viz. 'the compulsory redemption of the stipend payable by heritors, either by single payment, or by payments spread over a number of

years'. It was in the House of Lords that there was strong opposition to this clause on the part of the landed proprietors, who pleaded that they could not raise the capital sums necessary for redemption; and in particular, that a Socialist Government might nationalize the land at any moment, just when the proprietors had finished clearing the land of this burden of stipend.

Still, it was felt by the parties concerned that something had to be done in this complicated question of teinds and stipend. Negotiations were opened between the Church of Scotland and the owners of large estates, and that compromise was arrived at which is embodied in the Act of 1925, namely, that stipend ceased to be a burden upon the fruits of the land, a *debitum fractuum*, but became a *debitum fundi*, or burden upon the land itself like a feu-duty, and affecting singular successors. This burden or standard charge was made preferable to all other securities or burdens not incidents of tenure. Thus the Church of Scotland, while it failed to get compulsory redemption of stipend from the landowners, yet secured a firmer hold upon stipend as a *debitum fundi*. Land may go out of arable cultivation and bear no grain crops at all; in fact, this is highly probable in a country like Scotland, with a poor soil and a cold climate, in view of the abundant world supply of grain at present; nevertheless the burden of standard charge must be paid by the landowner. After a certain date (1936) the Church of Scotland will lose its right to augmentation of stipend from unexhausted teinds, but as a *solatium*, and for the withdrawal of the power to assess landowners and feuars for the provision and maintenance of churches and manses, the Church of Scotland was granted by the Act five per cent. additional upon the new standardized stipend, as calculated on the fifty years' average, 1873 to 1922.

The fact is that redemption of teinds was not found possible all over Scotland, and so it has been left optional for the landowner. Many of those members of the United Free Church who have declined to join the Church of Scot-

land gave as their reason that they refused to join a Church which draws revenue from a tax or duty, or standard charge upon land. They have the feeling that further legislation will yet be necessary, and that the matter has not been finally settled by the Act of 1925.[1]

One wonders whether the landowners would have redeemed stipend if the price had been further reduced by the ministers of the Church of Scotland; and whether, if the ministers had bravely sacrificed to some extent their rights to stipend, their Church members would not have rallied to their aid, and new life been inspired into the Church of Scotland, and Union made a success spiritually as well as economically.

As things are, we are back to that condition of teinds that obtained in the Middle Ages, when teinds were the common stocks and shares for sale or purchase; so is the standard charge to-day. It remains to be seen whether the Church of Scotland will be able to induce financiers to purchase the standard charge upon land confidently as a high-class security. The Church of Scotland would certainly be happier with an equivalent income from Consolidated Stock.

New incumbents of benefices, after the lapse of one year, will no longer have to collect their stipend from the landowners. The payment of the standard charge will be made to the trustees of the Church at Edinburgh, who, in the first place, make provision for a suitable salary for the minister of the parish whence the standard charge is drawn. Payment of stipend will be made twice a year by the trustees to the minister. Likewise the stipend will be of a regular amount, and will cease to vary with fiars prices. Payment can be enforced in the law courts, as in the case of any feu-duty. This is all to the advantage of the local minister, who will be freed of all direct financial dealings with the landowners. It

[1] A French professor, endeavouring to learn something of teinds, remarked, 'This is indeed funny; agriculture is not prosperous in Scotland, and yet it is burdened with the upkeep of a minority church. Why don't you rather impose a tax upon distillers and publicans to help the Salvation Army in its rescue work?'

is most likely that the needs of the local church will absorb the greater part of the local standard charge, and each parish will endeavour to retain the whole of it. Any surplus will be available to support poorer churches and even to build churches in new communities; but that surplus will not be large, and will certainly disappear if money loses its value by inflation.

No statistics are available of the present value of stipend payable out of teinds in the 880 old parishes, but it is estimated that the average sum is above £330, and the total actual stipend more than £300,000. The standard charge will be a heavier burden on land, and this burden will be felt particularly by those farmers who purchased their farms a few years ago in prosperous times, before the present depression in agriculture set in, and who purchased in ignorance of this question of teinds and standard charge.

For example, in Aberdeenshire at present (March 1930), the current price of oats is 12*s.* 6*d.* per quarter. The sheriff has fixed the fiars price of oats for 1929 crop at 17*s.* 7*d.* per quarter for first quality, an average price over the year; and in parishes where there has been no change of minister since 1925 the farmer-owner will pay his teinds at this rate. But where there has been a change of minister, the farmer-owner is compelled to pay the standard charge upon his land, calculated half in oats at £1 2*s.* $1\frac{10}{12}$*d.* per quarter, i.e. the average price 1873–1922. Thus the half stipend payable in oats is increased 26 per cent. by the change from teinds to standard charge. The fiars price of barley is about the same as the standarized price in the Act, viz. £1 12*s.* $2\frac{11}{12}$*d.* In addition, 5 per cent. is added to these standardized prices in lieu of assessments for church and manse, which now cease to be levied. Where teinds are unexhausted, and where the stipend is less than twenty-five chalders, an augmentation of six chalders will be given, and a smaller augmentation where stipends are larger. But the maximum augmentation will mean an increase of nearly 25 per cent. in

itself upon this burden on arable land. Fortunately for agriculture, in the majority of parishes teinds are already exhausted, and no augmentation can take place. Nevertheless, we are not astonished that this Act has been described as an excellent bargain for the Church of Scotland, Union or no Union; but if the low prices of grain persist, then it will continue to be hard upon the farmer-owner.

Any minister may elect to have his stipend standardized, and if the price of grain remains, as at present, below the standardized value fixed by the Act, then it will be profitable for the minister to do so. But no one can forecast the grain prices in Scotland for years ahead. For another reason ministers will hesitate to ask for standardization; the standardized stipend would be paid to the Trustees, who might consider a sum *less* than the standardized value to be a suitable provision for the minister.

On the other hand, if we take the long view and realize how money has in the past always depreciated in value, then this burden on land, fixed in money value for all time, will, if money depreciates in the future, become less heavy, like any feu-duty. It is true, however, that no school of economists at the moment favours a national policy of inflation, by which means France relieved herself of four-fifths of her debts after the War, and secured for herself a larger share in the world's trade, thence a contented populace and an end to unemployment. Inflation would be hard upon the ministers and a blessing to the landowners when paying a standard stipend. With an increase in the cost of living through inflation, that church in each parish with the first claim upon the standard charge would require the whole of the standard charge for its stipend, and no surplus would be available for any other church in the parish or for Church work in the 'black belt'.

The present situation can best be summed up from Hansard. The third reading of the Bill was passed by the House of Commons with 274 Ayes against 117 Noes, and the other votes taken throughout the discussion were similar.

We have to remember that in 1925 the Conservatives had just returned to power with an overwhelming majority, and that English, Welsh, and Irish members of Parliament must have voted on this Bill, in both lobbies, with little knowledge of this intricate question of teinds. Most Liberals voted against the Bill, while no more than four Labourists ever supported the Government. What were the arguments of the Opposition?

1. That it was incompetent for the British House of Commons to decide upon the question, or even to discuss it, in accordance with the terms of the Treaty of Union in 1707. The Speaker did not accept this argument.

2. That it was, in modern conditions, unjust and destructive of religious harmony to compel any man to pay for a religion of which his conscience might not approve, and whose tenets he might even consider blasphemous.

3. That since the Peterhead judgement of 1802 the assessment for Church buildings had fallen more and more upon the real rent heritors rather than on valued rent heritors; or in other words, when a heritor gave over land, on payment of an annual feu-duty, for the building of houses, the land so given took a share of the heritor's burden for the upkeep of church and manse, which share was calculated upon the real rent of the houses built; and that this was unfair, and against the immutable principles of religious liberty.

4. That Exchequer grants, amounting to £20,323 13*s.* 0*d.* per annum, were paid out of the Consolidated Fund to this one sect in Scotland, a minority Church, and that a large sum in redemption of these grants was likely to be gifted in perpetuity to one sect—a privilege granted by the State with no obligation to the State—unlawfully and unjustly.[1]

5. That the poor would lose all claim to church-door collections under Section 54 of the Poor Law Act of 1845, which section was to be repealed.

[1] See Appendix II for redemption.

6. That many teind-holders had, at the Reformation, acquired their teinds solely by *La loi du plus fort*, and being up till modern times the law-makers had freed themselves of their duties as teind-holders while still retaining the teinds; and that the heritors and the Church of Scotland, having ceased to make provision for education, for the poor, and for churchyards, had less claim to teinds and to State support.

7. That, when the churches in Wales and Ireland were disestablished, certain funds became available for public purposes; but that in Scotland no money for any such purposes would be available.

8. That other religious bodies in Scotland—Congregationalists, Baptists, Wesleyans, Free Churchmen, &c.—were raising objections.

9. That Scotland had not been consulted.

10. That a church should have faith in the people, and that, if voluntary gifts failed, that church was dead.

11. That the Church of Scotland had not performed all its functions in the past, and was not performing them well now.

12. That while the large heritors had refused to redeem teinds it was unfair to compel the smaller heritors with teind under £1 to do so.

13. That the Church of Scotland should pay the price of its freedom like other churches, and notably like the Free Church in 1843, whose ministers renounced manses and stipends of about £100,000 per annum.

14. That the Roman Church had long tried to establish that the teinds were theirs.

15. That national property was being converted into private property and conveyed to a minority church by a friendly government.[1]

16. That the stated object of this legislation—the Union

[1] *Reports to the General Assembly of the Church of Scotland*, 1925, p. 615: 'The General Assembly recognize with gratitude the friendly action of His Majesty's Government in introducing and granting facilities for the passing of the Bill.'

of Churches in Scotland—must arise in the hearts of the people, and could not be achieved by Act of Parliament.

17. That financial power will not give a church spiritual strength and impetus to fight evil.

18. That a church supported by the State cannot fight social evils against the will of Parliament.

The Secretary for Scotland, the Solicitor-General, the Lord Advocate, and the Under-Secretary for Scotland made answer:

1. That this Bill was simply an attempt to modernize an archaic burden.
2. That while complete redemption of teinds would have been preferable, this was a compromise of conflicting interests for the promotion of union among churches and for a new and better distribution of Church work over Scotland.
3. That this Bill proposed a settlement which would enable a reunited Church of Scotland to make the best and fullest use of its resources in the religious interests of the nation and in the exercise of the powers and liberties set forth in the Articles declaratory of the Constitution, as contained in the Church of Scotland Act, 1921.
4. That this Bill would make for a simplification of the land system, and was a matter that concerned the Church of Scotland and the landowners rather than the State.
5. That teinds should cease to fluctuate from year to year—with a good harvest in America grain fell in price and stipends fell in Scotland; when war broke out the price of grain rose enormously in Scotland, and the landowners, with farms let on period leases, received no increase of rent, but had higher stipends to pay.
6. That all landowners and feuars would be relieved of the upkeep of churches, manses, and churchyards in connexion with the Church of Scotland.

The Church of Scotland did not oppose this Bill, as it did the Bill of 1920, but actively promoted it. The reason was that on 23 May 1924 it had concluded an agreement with the owners of large estates (not with the small farmer-owners) not to press for redemption of stipend by law. True, the average price of the chalder offered in this Bill was considerably less than the price offered in the 1920 Bill along with redemption, approximately £17 per chalder against £21. But it was deemed wise to make a settlement by legislation so long as there was a friendly government in power with a solid majority.

Churches and manses are being handed over by the heritors to the trustees of the Church, after being put into a reasonable state of tenantable repair. The heritors lose their rights to seats, which may now be let by the Church. Churchyards are entrusted to Parish Councils (soon to County Councils) and to Town Councils.

By the Act of 1925 the minister in a parish with standardized stipend loses all right to ann or annat, which was the half year's stipend, due in certain cases, to the next-of-kin of a minister dying in service, as granted under an Act of the Scottish Parliament in 1672. Instead, payment of standardized stipend is made *de die in diem*—that is to say, from the day of induction to the date of death or resignation. Stipend during a vacancy remains at the disposal of the trustees.[1]

*Quoad sacra* parishes are parishes which have been carved out of *quoad omnia* or civil parishes, and in which a church building has been constructed to serve a new populous area. These, now 548 in number, were sanctioned by the New Parishes (Scotland) Act, 1844, as industries gave rise to towns,

[1] *A.P.S.*, vol. viii, p. 73. The ann to be a half-year's rent of the benefice or stipend over and above what is due to the defunct for his incumbency. If the incumbent survive Whitsunday, half of the year's stipend is due for the incumbency, and the other half for the ann; if he survive Michaelmas, the whole year's stipend is due for the incumbency, and half of the next year's for the ann; the executors to have right to the ann without confirmation.

but have no claims whatsoever for stipend out of teinds. Such churches have ministers of their own, but the teinds of *quoad sacra* parishes contribute to the stipends of the original *quoad omnia* parishes out of which they were carved. Frequently the church of the *quoad sacra* parish, in the midst of its populous area, has been overtaking far more work than the church in the rural *quoad omnia* parish; nevertheless, the minister of the latter parish *quoad omnia* has the first claim for stipend upon the new standard charge, as he had upon teinds.[1]

In the large burghs of Scotland the Town Councils at the Reformation, and after, took over the teinds, mortifications, &c., of the burgh churches for administration, and at present provide stipend and buildings. For example, in 1928–9 Aberdeen Town Council drew £87 18*s.* 3*d.* in teinds, £939 17*s.* 6*d.* in seat rents, and £513 18*s.* 10*d.* from mortifications made on behalf of the city churches.[2] But there was a deficit, made up by the city, of £755 0*s.* 10*d.* Now the Church of Scotland asks the City of Aberdeen to endow permanently its six city churches and ministers; all buildings are to be handed over to the trustees of the Church of Scotland; all investments held by the Magistrates for Church purposes are to be handed over likewise; and the Church of Scotland asks for the redemption of all sums paid by the Town Council for stipend, maintenance of buildings, &c., in accordance with the provisions of the 1925 Act. Accordingly the Aberdeen Town Council is asking powers from Parliament to authorize the Corporation to borrow monies payable by them for the purposes of a scheme or schemes of settlement, and to levy rates and assessments on owners and occupiers of property to meet the charges for interest and sinking fund on the monies so borrowed. Aberdeen Town Council will have to pay out to the Church of Scotland a far bigger sum

[1] 7 and 8 Vict. ch. 44.

[2] See *Mortifications under the Charge of the Town Council of Aberdeen, 1849*. Note the numerous mortifications in the post-Reformation period, when the Church was poor.

than ever was entrusted to it for administration,[1] about £40,000, as compared with £15,000, the present estimated capital value, held by the Town Council on behalf of the City Churches.

Teinds then in Scotland were an institution, which the Roman Church brought with it through England from the Continent. All the inhabitants were considered by the Church to be Christians for this purpose, and were expected to contribute for ecclesiastical and social requirements one-tenth part of their incomes. The Church did its best to enforce payment, using when necessary its mighty weapon of excommunication. Kings and nobility showed an example in the payment of teinds. Teinds were not a tax on land, but an assessment to be levied upon the fruits of all industry and commerce. When the Church failed to enforce payment then the King and Parliament made laws to regulate and enforce payment, but this compulsion was applied only to the fruits of the labourers of the soil. The full ideal purpose of teinds was to maintain priests, Church buildings, and poor within the area in which the teinds were collected. This ideal was never attained in Scotland, if anywhere, because the Roman Church spread over Scotland through its monasteries and bishoprics, which were established and endowed with teinds long before the one thousand parishes were marked off with boundaries. Thus from the earliest days of the Roman Church in Scotland a large share of ecclesiastical dues and gifts were appropriated by these central ecclesiastical organizations. The local clergy in Scotland before the Reformation were essentially hirelings. And further, some teinds were leased to laymen. As a rule the teind-sheaves were actually drawn on the cornfield, unless they were commuted by agreement or usage to a fixed number of bolls of victual. The teinds were always regarded as the rightful patrimony

[1] A settlement was made on 28 March 1930 on these lines. The figures are estimates by the Town Clerk.

of the Roman Church, and Parliament secured the Church in her patrimony.

In the confusion of the Reformation period, teinds, like Church lands, were entrusted to, leased to, or appropriated by powerful laymen, and some time elapsed before provision was made for the payment of stipend out of teinds to the ministers of the Reformed Church. The poor became a burden upon the Reformed Church, as also did education. The powerful teind-owning laymen cleared themselves of their obligations as teind-holders as far as they possibly could. In 1633 Charles the First, in order to increase the royal revenues, ordered the valuation of teinds and their compulsory sale by teind-holders to the heritors owning the lands whence the teinds were drawn. The valuation was fixed at one-fifth of the rental and the sale enforced at nine years' price of the valued teinds. Charles himself secured from the purchasing heritor a small fraction, called the King's Annuity. Owing to the unsettled condition of Scotland in the seventeenth and early eighteenth centuries slow progress was made in valuing teinds by the Commissioners appointed for the purpose. But as trenching and draining progressed in Scotland the heritors pressed for valuations of teinds before rents would rise unduly. Stipend and Church buildings remained a burden on teinds, and around 1800, when rents rose rapidly, owing to the wars in America and with Napoleon, the heritors agreed to augmentation of stipend and built better churches and manses.

Now in the twentieth century, with the continuous depreciation in the value of money and the low price of grain, teinds have wellnigh been exhausted throughout Scotland by the periodic demands for augmentation of stipend.[1]

Such is the chequered history of tithes in Scotland. It is a long story, characterized by endless bitter disputes and unseemly wrangling between the representatives, first of the

[1] *Church of Scotland Assembly Report*, 1925, p. 644: 'There are now no surplus teinds in 520 out of 844 old parishes of the Church.'

Roman Church and then of the Presbyterian Church, and the farmers and landowners. The custom of taking financial support for the Church from the fruits of the land originated at a time when these formed the only substantial form of wealth. It was doubtless fully justified, when the Church performed important social services, especially the relief of the poor and education, which have now, however, been taken over by other authorities. A reconsideration of the whole system in the light of modern developments in religion, administration, and the position of agriculture in relation to other industries has long been overdue. An important move in this direction has been made by the Act of 1925. This Act has put an end to the contentious and vexatious question of the provision and maintenance of the ecclesiastical buildings of the Church of Scotland, and it will in the course of time transform the variable burden of teinds into a fixed land charge, and restrict intromissions in them to two parties, viz. the landowners and the trustees of the Church of Scotland. The Act thus makes for the rationalization and trustification of the Church of Scotland, and at the same time effects a transformation and much-needed simplification of this ancient burden upon the land and its produce.

# APPENDIX [1]

## NOTES UPON PATRONAGE

At the Reformation, out of 940 parochial benefices, 262 were still patronate, i.e. parishes in which the incumbent drew the whole teinds, usually under the protection or patronage of some local landowner. In the case of the 678 patrimonial parishes, the teinds were drawn by some ecclesiastical corporation, church dignitary, or layman, who was supposed to provide a stipendiary priest, and there was no patronage in the accepted sense of the word.

In the *First Book of Discipline* Knox claimed that each individual congregation should have the right to elect its own minister, and until 1874 there was a struggle between landowners and the Church over this question. The landowners, being compelled to provide stipend out of teind, and thus to pay the piper, expected to call the tune, and appoint the minister. In the confusion of the Reformation period, powerful laymen acquired the rights of patronage in those parishes that had been held by Roman dignitaries and corporations. Not only did they appoint the minister, but they intromitted with stipend and teinds, particularly during a vacancy. The *Second Book of Discipline* protested, but an Act of 1592 forced the Presbytery to accept a qualified minister when presented by His Majesty or other lay patron. In 1649, during the Civil War, patronage and episcopacy were both abolished and compensation provided for patrons. Patronage was described by the Act as an evil and bondage, under which the Lord's people and ministers had long groaned, prejudicial to the liberties of the people, and contrary to the *Second Book of Discipline*.[2] In 1660 episcopacy and patronage were both restored, and all ministers elected by congregations during the period 1649–60 were ordered to be ejected if they did not accept presentation from the patron and submit to the bishop. One-third of the clergy, over 300 ministers, vacated their livings at this time, and then followed the persecution of these Covenanters. After the Revolution patronage was again abolished in 1690, and nomination of ministers was given to protestant heritors and elders, the minister nominated to be approved by the congregation. Heritors and life-renters were ordered to compensate patrons with

[1] See footnote, Chapter II, page 19.

[2] *A.P.S.*, vol. vi, part ii, p. 261.

600 merks, but only four parishes paid compensation. Once more, in 1712, the aristocracy, of whom many had episcopal and Jacobite leanings, were able to have the rights and powers of patronage restored to themselves, and many used their powers over the ministers in the interest of Jacobitism. This restoration of patronage was a violation of the Treaty of Union, and the cause of the secessions from the Church of Scotland. It was claimed that this question was reserved by the Treaty of Union from discussion in the British Parliament. All the time the Church of Scotland complained of this tyrannical system, for it was held in bondage by heritors who paid stipend and patrons who made appointments. The House of Commons granted a Committee of Enquiry in 1834, but passed no legislation to grant freedom. Then came the Disruption in 1843, when 474 ministers bravely signed away stipend, manse, and glebe to form the Free Church of Scotland. Many lairds, in their anger at losing control of this part of the Church, refused to grant land for the building of Free Churches. Finally, in 1874, after repeated protests from Assemblies of the Church of Scotland, patronage was abolished. No compensation was granted to the Queen *qua* patron. Private patrons, desiring compensation, had to apply within six months from 1 January 1875, and were granted by the Sheriff one year's stipend on the occurrence of a vacancy, payable in four equal yearly instalments off the new minister's stipend, unless the money were provided otherwise. In 1874 the statistics of patronages were:[1]

| | |
|---|---|
| Total numbers | 999 |
| Held by Crown, Corporations, &c., with no claim for compensation | 373 |
| Held by private patrons | 626 |
| Patrons renouncing claim | 384 |
| Compensation claims | 242 |

The total sum claimed was £59,160. In 1875 the Assembly appointed a Patronage Compensation Committee to raise funds to relieve ministers from losses through patronage claims. In 1879 this Committee reported that it was able to pay half the losses to ministers. Later on, as vacancies arose, more patrons renounced claims, and gradually patronage disappeared.

[1] *Year Book of the Church of Scotland*, 1886.

## APPENDIX II

### REDEMPTION BY STATE OF EXCHEQUER GRANTS TREASURY MINUTE DATED 5 JULY, 1927

My Lords read Section 19 of the Church of Scotland (Property and Endowments) Act 1925 (15 and 16 Geo. V, chap. 33), which provides that the Treasury may at any time contract for the redemption of the charges and payments described in the Seventh Schedule to that Act (a copy of which Schedule is annexed to this Minute) by payment to the Church of Scotland General Trustees of such capital sum or sums as may be agreed between the Treasury and the General Trustees.

The Chancellor of the Exchequer states to the Board that the General Trustees have offered to accept the redemption of these payments, amounting in all to £20,323. 13. 0 per annum, as at the 28th May last, by the payment of a capital sum of £408,060. 15. 9, and he recommends that this offer be accepted.

My Lords concur.

Let the necessary directions be given accordingly.

Let copies of this Minute be laid before the House of Commons and be sent to the Comptroller and Auditor-General and the National Debt Commissioners.

### EXTRACT FROM CHURCH OF SCOTLAND (PROPERTY AND ENDOWMENTS) ACT 1925

Seventh Schedule

Sections 19 and 39.

Payments out of the Consolidated Fund.

(1) The annual sum of £12,000 on account of augmentations of stipends chargeable on and payable out of the Consolidated Fund of the United Kingdom, under the Teinds Act, 1810, and the Teinds Act, 1824.

(2) The annual sum of £5,040 on account of stipends, chargeable and payable, as aforesaid, under the Act 5, George IV, chapter 90.

(3) The annual sum of £2,000 chargeable and payable as aforesaid to the General Assembly for itinerant preachers.

(4) The annual sum of £1,100 chargeable and payable as aforesaid towards the expenses of the General Assembly.

(5) The annual sum of £86 3.1. land revenue allowances, chargeable and payable as aforesaid to certain precentors and ministers.

(6) The annual payment under Royal Warrant to the minister of Dunkeld and Dowally of an amount fixed by reference to Fiars prices, chargeable and payable as aforesaid.

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# INDEX


Aberdeen, 18, 20, 63, 80, 85, 118, 124.
Aberdeen Assembly 1605, 82.
Aberdeen, Bishop of, 37, 63, 64, 66, 67, 69, 71, 83, 84, 123.
Aberdeen Bishopric, 115.
Aberdeen Cathedral, 25, 62, 69.
Aberdeen College, 124.
Aberdeen, Dean and Chapter of, 84.
Aberdeen Diocese, 72.
*Aberdeen Journal*, 129.
Aberdeen, New College, 133.
Aberdeen Town Council to redeem teinds, &c., 182.
Aberdeen Universities, 115.
Aberdeenshire, 25, 66.
*Aberdeenshire Fiars Courts and Prices*, 158.
Aberdeenshire, standard charge, 176.
Aberdeenshire, *View of Agriculture*, 145, 161, 162.
Abbey Lands at Reformation, list of, 82.
Aboyne, Lord of, 114.
Abraham, 3.
Act 1561, 84, 96.
Act 1567, 89.
Act 1579, 89.
Act 1592, 92, 96.
Act 1594, 93.
Act 1606, 91.
Act 1612, 91.
Act 1617, 92, 95.
Act 1621, 96.
Act anent the election of Bishops and Archbishops 1606, 94.
Act anent the Plantation of Kirks 1617, 94.
Act anent the restitution of Chapters, 94.
Act of Annexation 1587, 81, 82, 87, 90, 92, 93.
Act 5 Geo IV, 188.
Act 15 Richard II (1391), 65.
*Acts of Apostles*, 5.
Adam, Francis, 132.
Adrian, Pope, 63.
advantages of teinds in primitive Scotland, 45.
Advocates Library, 83.
Agesilaos, 3.
agriculture after Union of Crowns, 97.
agriculture developed by lairds, 77.
agriculture developed by monks, 77.
agriculture hampered by teinds, 50.
*Agriculture in Aberdeenshire in the Nineteenth Century*, 129.
Aitken, George A., 116.
Alan, Justiciary, 67.
Alexander, Sir William, 100, 111, 112.
Alexander the First (King), 20, 64, 66.
Alexander the Third (Pope), 14, 61.
Alfred the Great, 12.
Allan, James, 129.
Alvah, 25.
Ambrose (St.), 1, 6.
American harvest and stipend, 180.
American War of Independence, 149, 152, 184.
Ananias, 5.
Anderson, James, 151, 153.
Anglo-Norman invasion of Scotland, 20.
Anglo-Normans, 21.
Anglo-Saxons, 9.
animal teinds, 39.
ann or annat, 181.
Anne, Queen, 119.
Annuity to King Charles I 1627, 103, 110, 111, 123, 184.
*Antiquities of the Shires of Aberdeen and Banff*, 64.
Apollo, 3.
*Apostolic Constitutions*, 5.
Appendix I, patronage, 186.
Appendix II, Exchequer Grants redeemed 1927, 188.
application of teinds, abuses in, 54.
*A.P.S.*, 20, 21, 30, 35, 42, 43, 44, 80, 81, 85, 88, 89, 91, 92, 93, 94, 96, 113, 114, 115, 116, 117, 119, 120, 125, 126, 181, 185, 186.
Arbroath, 65.
Arbroath Abbey, 30, 81.
Arbroath, Abbot, 68.
Arbuthnot Missal, 36.
Arbuthnot Parish, 132.
Arbuthnot, Rev. A., 116.
*Archaeologia* of Dionysius, 3.
Argyle, Rebellion in 1649, 114.
Argyllshire, 95.
Arnot, Sir David, 124.
Arran, James, Earl of, 78.
Assembly, Church of Scotland, 97, 126, 127, 156, 188.

Athelstan (King), 12, 21.
Auchterarder, 95.
Auditor-General, 188.
augmentation of stipend, 108, 126, 128, 143, 156, 157, 158, 169, 176.
augmentations of stipend by State, 162.
Augustine (St.), 6, 10.
Augustinians, 60.
Autobiography (Carlyle), 126, 127, 128.
Ayton, 144.

Bach, W.C., 161.
Badenach, Rev. James, 31, 135.
Bailie of Munkland, 121.
balliva, 22.
Baltic, 27.
Baluzius, 8, 9, 10, 11, 12, 33, 54, 55, 56.
Banchory, 30, 67, 68.
Banff, 18, 63, 68.
Banffshire, 25, 66.
Banffshire, *View of Agriculture*, 146.
Bannockburn, 42, 68.
banquet at teinding, 46.
Baptists, 164, 179.
Baron Court, 38.
Barons of Exchequer, 111.
baronetcies offered (Nova Scotia), 111.
Bartholomeus, 1.
Basis and Plan of Union, 165.
beggars, strong, 58.
*Beggars' Summons*, 12, 74–6, 129.
Beauly, Priory, 83.
Benedictines, 31.
Benholm, 141.
Berwick, *View of Agriculture*, 144.
Bethelnie, 68.
Beyn, Bishop, 19.
Birse, 95.
Birse, forest of, 63.
bishop shares in tithes, 7, 10, 54.
bishoprics abolished, 82.
Bishops' Loch, 83.
bishops misdirect tithes, 11.
bishops re-established and consecrated 1606, 82, 94.
Bishops' War, 112.
Bishopston, 83.
Blackburn, 83.
Blackburn, Lord, 161.
Blackburn, William de, 65.
Blair, 136.
Blair, Ada de, 65.
blenshe tenure, 99.
Board of Agriculture, 77.
Board of Agriculture, First, 137.
Bohun, W., 161.
*Book of Deer*, 18.
*Book of Discipline* (*First*), 79, 85, 86, 186.
*Book of Discipline* (*Second*), 87, 113, 186.
Bothwell Brig, 112.
Braichley, 117.
Braidmeadow, 122.
brawling at leading of teinds, 34.
Brechin, Bishop of (see *Reg.*), 62.
Britain (tithes in), 9, 12.
Brittany, 17.
Brown, Hume, 13, 47, 78.
Brown, Sir David, 134.
Brown's *Supplement to Decisions*, 123.
Bruce, Sir William, 124.
Bruces, 81.
Buccleuch, Duke of, 131.
Buchan, Alexander, 89.
Buchanan, David, 113.
Buddhism, 2.
burgh churches and teinds, 181.
Burnet, Alexander, 123.
Bustler, Reginald, 65.

Caithness diocese, 72.
Calder, Heritors of, 130, 131.
Calderwood, David, 95.
Callander, Earl of, 110, 122.
calves teinded, 40.
Cambrai, 8.
Campbell, John, Earl of Loudoun, 111.
Campbells, 81.
can, 23.
Canada, tithes in, 15.
Cape Breton Island, 112.
Capitularia, 8.
Cardross Lordship, 88.
Carloman, 8.
Carlyle, Alexander, 126, 127.
Carmelites, 83.
Carrick, 135.
Caskieben, 111.
casualties of court teinded, 88.
cathedrals, constitution of, 61.
cathedrals, value of, 76.
Celtic Church, 18, 21, 78.
Celtic Church Endowments, 19.
Celtic monuments destroyed in France, 17.
Celtic religion, 9.
Celtic remains in Scotland, 17.
*Celtic Scotland*, 89.
Ceylon, 2.
chalder, 46, 97.
chalder value, 166, 167, 180, 181.
Chapel Royal, Stirling, 83.

Charlemagne, 8, 9, 10, 12, 17, 54, 55, 56.
Charles the First, 4, 98, 99, 100, 103, 104, 107, 108, 110, 111, 113, 149, 184,
Charles II, 112, 115, 116.
Charles Martel, 8.
*Chart. Lindores*, 25, 32.
*Chart. Priory St. Andrews*, 32.
cheese teind, 40.
chicken teind, 40.
Christ, 4, 6, 9, 63.
*Church and Churchyard of Rathven*, 114, 118, 160.
church buildings, maintenance of, 129.
church buildings provided, 25.
Church of Scotland Act 1921, 165, 180.
Church of Scotland (Property and Endowments) Act 1925, 163, 165, 167–73, 174, 182, 185, 188.
Church of Scotland (Property and Endowments) Act 1925, Arguments against, 178–9.
Church of Scotland (Property and Endowments) Act 1925, Arguments for, 180.
Church Union, 166.
Cicero, 3.
Cistercians teind free, 31, 66.
civic endowments, 165.
clare constat, 127.
Clark, V. E., 29.
Clatt, 62.
clergy, demoralization of, 52.
Cloveth, 19.
*Code of Agriculture*, 150.
Coldingham Abbey, 81.
Coldingham, prior of, 84.
Coldstone, 88.
collection, abuses in, 54.
collusion of titulars and heritors, 116, 117.
commendator, 24, 81, 93.
commendators at Reformation, 80.
commerce, priest not to enter, 59.
Commission for Surrenders of Superiorities and Teinds, 101, 102, 103.
Commissions for Plantation of Kirks, 112.
Committee on Teinds 1922, 166.
*Common Good of Aberdeen*, 126.
commonty, teind on, 137.
commutation of teind (see valuation), 104, 105, 108, 109, 112.
commutation of teinds early in Scotland, 35.
commuting of Jewish tithe, 4.
Comptroller, 188.
compulsory payment of tithes, 10.
conclusion, 182.
Confession of Faith, 95.
Congregationalists, 164, 179.
Connell, John, 95.
Conservatives, 181.
Conservatives and 1925 Act, 177.
Consolidated Fund, 171, 188.
Consolidated Stock, 175.
Constable, Lord, 161.
Cormack, Alexander A., 74, 84, 129.
Coronation of Charles I in Scotland 1633, 103, 111.
*Corpus juris canonici*, 6.
corruption in medieval Church, 53, 60.
corruption of clergy at Reformation, 78.
Councils of Church, 6, 7.
Council of Trent, 72.
Council, Scottish in 1549, 70.
Council, Scottish 1558, 71.
County Councils, 181.
Coupar-Angus, 25.
Coupar monastery, 69.
Covenant, 111, 112.
Covenanters, 186.
Craig parks, 133.
Crailing Heritors, 134.
Cramond, William, 114, 118, 160.
Crawford, Thomas, 122.
Crawford and Lindsay, Earl of, 113.
Crichie mill, 65.
Crichton, Robert, 120.
Croesus, 2.
Cromwell, 16, 115, 122.
Crusades, 56.
Culdees, 18.
Cullen, Lord, 161.
Culsalmond, 25.
cum decimis inclusis, 31, 87, 115, 135.
curé de campagne, 51.
Cushney Heritors, 132.
custom, law of, 37, 38, 39, 49.
Cuthbert (St.), 19.
Cyprian, 5.
Cyrus, 2.

Dalkeith feuars, 131.
Dalrymple, 124.
Dalrymple, Hew, 133.
Damasus (Pope), 6.
dates of payment of tithes in England, 13.
davach, 20.
David (King), 14, 18, 20, 21, 22, 29, 62, 67, 76.
David II (King), 42, 67.

David (parish), 87.
Daviot, 62.
debitum decimarum, 160.
debitum fructum, 15, 122, 160, 174.
debitum fundi, 15, 111, 122, 174.
decimae debentur parocho, 14, 86, 121.
decimae garbales, 30.
decimae majores, 30.
decimae minores, 30.
decimae rectoriae, 30.
decimae vicariae, 30.
*Decimarum et oblationum tabula*, 161.
decisions in teind cases, 120–4, 130–7.
Decreet of Valuation 1809, 156.
decreets arbitral, 104, 105.
de die in diem payment of stipend, 181.
deductions in valuations, 133.
Dee and Spey, 66.
Deer, 18, 65.
Deer, Abbey, 81.
delay in teinding, 39.
Delphi, 3.
*De natura deorum* (Cicero), 3.
deputation to King Charles I 1627, 100.
desuetude, 36.
Deuteronomy, 4.
Devil, 2, 80.
*Dictionary of Decisions*, 31, 120.
*Dictionary of National Biography*, 110.
*Dictionnaire philosophique*, 51.
Dionysius of Halicarnassus, 3.
disadvantages of teinds, 46.
Disruption, 164, 179, 186.
dittay, 43.
Dodds, Sir J. M., 166.
Dominican Monastery, Edinburgh, 71.
dominus, 22.
Douglas, 124.
Douglas, Rev. Robert, 149.
Douglases, 81.
Dowally, 188.
Dowden, John (*Medieval Church*), 13, 40, 41.
draining and teinds, 131.
Drumclog, 112.
Drummond, 124.
Duff, James, 88.
Duffus, 42.
Dulmach, 19.
Dumfries, *View of Agriculture*, 147.
Dunbar, 112.
Dunblane, Bishop of, 94.
Dunblane Bishopric, 82.
Duncan, Earl of Mar, 64.
Duncan, Lord of Carrick, 38.
Dundee, 44, 85.
Dunfermline, 81.
Dunfermline Abbey, 81.
dung, loss of, 51.
Dunkeld, 120, 188.
Dunkeld, Bishop of, 80.
Durham, 19.
duties of teind-holders, 128, 179.

Early Christian Church, 5.
*Early Travellers in Scotland*, 47, 78.
East Lothian, 132.
*Ecclesiastes*, 54.
economics of teinds, 45.
Edgar (King), 13, 19.
Edinburgh, 70, 71, 85, 100, 101, 103, 124, 175.
Edmond (King), 13.
Ednam, 19.
Education (Scotland) Act 1872, 130.
egg-laying test 1928, 40.
egg teind and production, 40.
Eglinton, Earl of, 133.
eleemosynary tax, 112.
Elgin, 22, 23, 42.
Elgin Cathedral, 61, 62.
Elgin, minister of, 123.
Elgin, treasurer of, 68.
Elphinston, Lord, 123.
Elphinstone, Bishop, 132.
enclosures, 124, 130, 132, 135, 152.
England, 36.
England and Scotland compared for tithes, 137–54.
England, commutation of tithes, 35.
England, tithes in, 50.
England, tithes redeemed late, 106.
England, vexatious tithes in, 138 et seq.
Episcopacy abolished, 118.
Erskine, John (jurist), 26.
Erskine, Thomas, 88.
Erskines, 81.
escheats, 67.
Esk, 136.
Esk, North, 133.
*Essays relating to Agriculture*, 151, 153.
Estates (Three), 82, 83, 90, 106, 107, 118.
Ethelred (King), 13.
Eucharist withheld for non-payment, 37.
Evangelical Union, 164.
evils in pre-Reformation Church, 70, 71–4.
Exchequer Grants, 165, 188.

Exchequer Grants redeemed 1927, 178, 188.
excommunication for non-payment, 36.
exhorters, 85.

Falconer, Lord, 132.
Falconer, Sir David of Newton, 112.
famine 1622–23, 112.
Farquharson, Alexander, 126.
fast days, 107.
Fearn Abbey, 82.
Fénelon, 152.
Fetternear, 64, 83.
Fetteresso, 97.
feuars liable for Church buildings, 129, 178.
feuars pay teinds, 127.
feudal lords forbade buying of teinds, 35, 37.
Feudal System, 23, 74, 76.
fiars, 158, 165, 176, 188.
Fife, *View of Agriculture*, 139.
Findlater, Rev. Charles, 139.
fish teinds, 36, 41.
Fittismire, 123.
flax teind, 42.
Fleming, Sir James, 113.
Fleuriot, Zénaïde, 17.
Footdee, 123.
Forbes, Alexander, Coldstone, 88.
Forbes, John, Coldstone, 88.
Forbes, William, Coldstone, 88.
Fordun, 65.
Fordyce, 114.
Forfar, 19.
Forfar, *View of Agriculture*, 156.
Forfarshire, 87.
Forfarshire, valuation of, 156.
Forgue, 68.
Formartine, 37.
France, 36.
France, inflation in, 177.
France, tithes earlier in, 16.
France, tithes in, 51.
France, tithes at Revolution, 50.
France, tithes in seventeenth century, 26.
Frankalmoign tenure, 26.
Franks, 8, 33.
Free Church, 186.
Free Churchmen, 179.
French Professor, 175.
Friars, Grey, 83.
Friars, Red, 83.
Friars, White, 83.
Fullerton, Charles, 133.
Fyvie, 68.

Galloway, Bishop of, 94.
Gamelus, priest, 65.
Gamrie, 68.
garden produce teinded, 42.
garden teinds dispute, 42.
*Genesis*, 3.
Germany, 51.
Gibb, William, 123.
Gilbert (Knight), 22.
Glasgow, Archbishop of, 94.
Glasgow, Bishop of, 38.
Glasgow Cathedral, 62.
Glasgow College, 121, 135, 136.
Glasgow diocese, 38.
Glasgow University, 130, 131.
Glass (Aberdeenshire), 2.
Glassery, 95.
glebe, 96, 114.
glebe not teinded, 89.
Glenmuick, 126.
Goodman (Devil), 2.
Gordon, Alexander, 134.
Gordon, Duke and Duchess, 130.
Gordon, Duke of, 118.
Gordon, Mr. (Rathven), 119.
Gordon, William, Bishop of Aberdeen, rebuked by his clergy, 84.
Gordons, 81.
Gordonstone, Lieut.-General Drummond, 113.
Govan parish, 121.
Gowrie, Earl of, 81, 88, 120.
Grahams, 81.
grain, return of, 32.
Grant, Miss I. F., 155.
grass sown, 124.
grass sown not teindable, 134.
grassum, 24, 131.
Greece (tithes in), 3.
Gregory, Bishop of Ross, 57.
Gregory of Tours, 7.
Gregory VII (Pope), 56.
Greyfriars Monastery, Aberdeen, as Hospital, 80.
goose teind, 40

Haldane, Lord (of Cloan), 166.
Halloween, 121.
Hamilton, 120.
Hamilton, Duke of, 112.
Hamilton, John, 78.
Hamilton, Lord Claud (Lord Paisley), 81.
Hamilton, Lord John, 81.
Hamiltons, 81.
Hansard on 1925 Act, 177.
Hanoverian succession, 127.
Harlaw, 129.
Hart, R., 13.

Hay, 124.
Hay, Rev. George, 118.
Hay, John, 132.
Hay, Rev. John, 118.
hay teind, 35.
Hayley, F. A., 2.
Hebrews, 3.
*Hellenics* (Xenophon), 3.
Henrietta Maria of France, 111.
Henry, Bishop of Aberdeen, 69.
Henry, Prince of Scotland, 98.
Hercules, 3.
Heriott, Adam, 85.
heritors and poor, 129.
Herodotus, 2.
Hervey (marshal), 22.
Highlands and Islands (43 chapels in), 163.
*History of the Kirk of Scotland*, 95.
Holland, 51.
Holy Land, 42.
Holyrood Abbey, 81.
Holyrood, Abbot of, 84.
Home, George, Earl of Dunbar, 82.
Homes, 81.
Hope, James, 88.
Hospital, St. Peter's, Aberdeen, 65, 84.
Hospitallers (Knights of St. John), 31.
Hospitius, 7.
House of Commons, 186.
House of Commons (1925 Act), 177.
House of Lords, 129, 174.
Hugo (clerk), 22.
Hume, Dame Alison, 25.
Hunter, Walter, 134.
Huntly, Marquis of, 71, 80, 84, 114.
Huntly town, 130.

Ignatius de Loyola, 69.
improvements in land near Aberdeen, 145.
in commendam, 24, 79, 81, 83.
Industrial Revolution, 152.
infeudation, 26, 31.
inflation in France, 177.
inflation of money, 156, 177.
Inglis, 121.
Innes, Cosmo, 31, 43.
Innocent III (Pope), 32, 33, 61.
Innocent IV (Pope), 35.
Innocent V (Pope), 42.
Insch, 25.
Insh, G. P., 112.
*Institutes* (Erskine), 26.
*Institutions of the Law of Scotland* (Stair), 32, 109, 111.
introduction of teinds into Scotland, 16.
Invercauld Records, 88, 115, 117, 126, 127, 128, 156.
Inveresk, 127.
Inverness, 88.
Inverness heritors, 132.
Inverness Magistrates, 132.
Inverneythie, 120.
ipsa corpora, 114, 122, 124, 132.
Ireland, 151.
Ireland, disestablishment, 179.
Israel, 3.
Israelites, 2.
itinerant preachers, 188.
Italy (*tithes in*), 3.

Jacobite Rebellions, 18.
Jacobites, 187.
James I (King), 43.
James II (King), 62.
James IV (King), 62.
James IV (King), 43.
James V (King), 83.
James VI (King), 79, 82, 87, 94, 95, 97.
James VII (King), 111.
Jedburgh, 58, 85.
Jedburgh Abbey, 44.
Jehovah, 3.
Jerome (St.), 6, 55.
Jerusalem, 31.
Jesuits, 69.
Jews (tithes of), 3, 4, 5.
John, Bishop, 22.
John, Canon of Dunkeld, 68.
Judas, 4.
Jupiter, 3.

Keith augmentation, 161.
Keith, Dr. George Skene, 145, 161, 162.
Keith, Robert de, Marischal of Scotland, 67.
Keith, Robert (Lord Altrie), 81.
Keiths, 81.
Keithhall, 162.
Kelso, 19, 60.
Kelso Abbey, 76, 81.
Kemnay, 83.
Kent, tithes in, 12.
Ker, Mark, 122.
Kerr, Robert, 144.
Kers, 81.
Kildrummy Castle, 67.
Kincaid, John, 133.
Kincardine O'Neil, 67.
Kincardineshire, *View of Agriculture*, 141.

Kincraig, 155.
Kinghorn, 66.
King's College, Aberdeen, 80, 117, 126, 132.
King's Ease, 105.
kings enforce payment of teinds, 182.
kings show example in paying teinds, 182.
Kingussie, 17.
Kinloss Abbey, 83.
Kinnaber, 133.
Kirk Session and poor, 129, 130.
Kirkwood, 121.
Knox, John, 77, 80, 85, 86, 186.
Kyninmond, Bishop Matthew, 65, 66.

Labourists and 1925 Act, 178.
lactation period, 40.
Laich Council House, Edinburgh, 100.
la loi du plus fort, 179.
lamb teind, 40, 41.
land reclaimed not teindable, 133.
language of Acts of Scotland, 43.
Large Declaration of Charles I 1629, 103.
Lateran, 68.
Lateran Council, 31, 56, 57, 61, 135.
laymen as priests, 56.
laymen intromit, 56.
laymen lease churches, 61.
laymen withholding teinds, 36.
Lawie, Paul, 15.
leading of teinds, 33.
lease, improving (agriculture), 133.
lease of teinds, 105.
leasing of teinds, 43, 87, 88, 116.
leasing of teinds permitted 1606, 91.
leases, 129.
le clocher fait la dîme, 15.
Leghorn pullet, 40.
Leith, 85.
Leishman, Rev. Thomas, 16.
Lennox, Duke of, 94.
Lennox, Duke of, commendators, 93.
Lennox, Earl of, 38.
Lennox, Regent, 87.
Lenzie, 97.
Leptines, 8.
Leslies, 81.
Lesmahagow, 60, 81.
*Letters to the Earl of Aberdeen*, 113.
Levi, 3.
Levite, 4.
Levites, 5.
*Leviticus*, 4.
Liberals and 1925 Act, 178.
*Life and Works of John Arbuthnot*, 116.
Lincoln, 61.
Lindores, 25, 32, 65.
Lindsay, John, of Balcarres, 87.
Linlithgow, Earl of, 100, 110.
Liti, 9.
Livingstone, Alexander, Earl of Linlithgow, 110.
Livingstone, James, Earl of Callander, 110.
Livingstone of Almond, Lord, 111.
locality, 117.
Locmariaquer, 17.
Logiemar, 64.
Lombards, 7.
London, 127.
Lord Advocate, 180.
Lords and Barons at Reformation, 70, 71.
Lord Clerk Register, 120.
Lord Ordinary, 168, 169.
Lords of Council and Session, 84, 119, 120, 125, 141, 142, 159.
Lords of Erection, 101, 103, 104, 126.
lordships, 93.
lordships at Reformation, 82.
lordships for commendators, 81.
lordships restored to bishops 1606, 94.
Loudoun, Earl of, 100, 111.
Ludovic, Duke of Lennox, 93.
Lullus, Bishop of Mayence, 8.
Lundeath, 115.
Lyndesay, Sir James de, 37.

Mackenzie, Colin, Earl of Seaforth, 82.
Mackenzie, Sir George, 83, 111.
Mackintosh, Miss, 155.
Maclay, Sir J. P., 166.
Mâcon, 7.
Mâcon Council, 54.
Maitlands, 81.
Malcolm Canmore, 13, 16, 19, 20.
Malcolm IV (King), 63.
manses rebuilt (1800), 157.
Mansi, 7, 10, 14, 27, 29, 33, 41, 54, 56, 57, 61, 66.
Mar, Earl of, 64.
Mar, Regent, 87.
Margaret, Queen of Scotland, 16.
Marischal College, 80.
Marischal, Earl, 80.
marl, 134.
Mary, Queen of Scots, 80, 84.

Marykirk, 132.
Matthew, Bishop, 22.
*Matthew*, 4.
Maxwell, 132, 136.
Maxwell, Robert, Earl of Nithsdale, 82.
Maxwell, Sir John, 131.
Mayence, Bishop of, 8.
Medieval Church, 78.
*Medieval Church* (Dowden), 13, 40, 41.
*Medulla conciliorum Magnae Britanniae*, 13.
Melchizedec, 3.
Melrose Abbey, 66.
Melville, Andrew, 89.
Menmuir, Forfarshire, 87.
Merchiston, 120.
Methodists, 164.
Middle Ages, 38, 49, 50, 57, 175.
Midlothian, *View of Agriculture*, 137.
milk teind, 40.
Mill, John Stuart, 48.
miller pays teinds, 35.
*Miscellany of New Spalding Club*, 158.
misdirection of teinds, 24, 25.
misdirection of tithes (early), 6.
modern legislation on teinds, 156.
Monaltrie, 126.
monasteries, value of, 28, 76.
*Monastery of Kinloss*, 32.
money Scots, 126.
Monro, Andrew, 122.
Montgomery, 123.
Monymusk, 60.
Monymusk Priory, 82, 94.
Moray, 20, 23, 41, 42.
Moray, Bishop of, 80, 83, 87, 94.
Moray diocese, 72.
Moray, Earl of, 84, 135.
Moray, Regent, 84.
Moray, teinds legalized in, 21.
Morbihan, 17.
mortifications to city churches, 182.
*Mortifications under the charge of the Town Council of Aberdeen*, 182.
Mortlach, 19.
Mortlach Cathedral, 18.
Moses, 3, 4.
Munkland, 121.
Munro, A. M., 126.
Munro, Robert, 166.
Munro, Sir Hugh, 134.
Murray, Baillie Charles, 113.
Murray, John, Earl of Tullibardine, 82.
Musselburgh, 59.
Napoleonic Wars, 152, 158, 162, 184.
National Debt Commissioners, 188.
*Nature of the Gods*, 3.
Nectan, Bishop of Aberdeen, 62, 63.
Nero, Emperor, 36.
New Parishes (Scotland) Act 1844, 181.
Newbattle Abbacy, 122.
Newhills, 129.
Newlands, 157.
Newlands parish, 139.
Nice, 7.
nobles intromitting, 38.
North Mavine Heritors, 137.
novalia, 38, 131.
Nova Scotia, 111, 112.
*Numbers*, 3.

oblations, 26, 29.
Office of Works, 58.
Officers of State, 134, 135, 136.
Ogilvie, Colonel F., 31, 135.
Ogilvie, Sir Patrick, 113.
Ogilvy, Sir Walter, 25.
Old Aberdeen, 18, 62.
*Old Highland Farm*, 155.
*Old Testament*, 3.
Orders, Religious, teind-free, 31.
Ordinance 1561, 86.
Origen, 5.
Origin of Teind System, 1.
Orkney, Bishop of, 83.
Orkney diocese, 72.
Orwell, 137.
Ovid, 1.

Paisley Abbey, 81.
Palestine, 6.
Parish Councils, 129, 164, 181.
parishes at Reformation, 24, 77.
parishes at Reformation, number of, 89.
parishes disjoined, 97, 102.
parishes in Scotland, number, 83. 176.
parishes, origin of, 19.
parishes united, 97.
Parliament Close, fire in, 16.
Parliament, Red of Perth (1606), 82.
Parochial Board, 164.
parson, non-residence of, 62.
parson of parish, 23.
parsonage teinds, 24, 124, 137.
pasture for minister, 96.
pasture teind, 41.
Patrick (Knight), 22.
patron of a church, 23, 61, 97, 10 148.
patronage, 19, 76, 81, 118, 186–7.

patronage abolished 1649, 113.
patronage, Appendix I, 186.
patronage, Committee of Enquiry 1834, 187.
Patronage Compensation Committee, 187.
patronage finally abolished, 187.
patronages in 1874, 187.
Paul, Apostle, 68.
peats, 135.
peats teinded, 42.
Peebles, *View of Agriculture*, 139, 157
Pelasgians, 3.
Pepin the Short, 8.
Perlin, Estienne, 78.
Perth, 43, 82, 85.
Perth, Earl of, 112.
Perth, five Articles of, 97.
Perth Provincial Council, 31, 135.
Perth, Sheriffdom, 88.
Perthoch, Walter de, 65.
Perthshire, *View of Agriculture*, 138.
Peter, 5.
Peter, Apostle, 68.
Peter, Bishop of Aberdeen, 67.
Petter of Polloc, 22.
Peterhead decision, 129, 178.
Peterkin, 135.
Philip (marshal), 22.
pigeons teinded, 42.
Pithou, 6, 55.
Plat, decreet of, 119.
ploughgate, 19.
plurality of offices, 57, 83.
Plutarch, 3.
Plymouth Brethren, 164.
Poiton, Richard, Bishop of Aberdeen, 66.
political disturbances in seventeenth century, 109.
poor, assessments for, 129.
poor attack monasteries at Reformation, 74.
Poor Law Act 1845, 178.
Poor Relief, 163.
*Poor Relief in Scotland*, 74, 84, 129.
poor share in teinds, 12, 45, 52, 55, 58, 65, 129.
Pope 9, 55, 63, 65, 67, 68, 69, 71.
*Port of Aberdeen* (V. E. Clark), 29.
Port Royal, 111.
Pratt, William, 65.
prebenda, 61.
precentors, 188.
Premnay, 25.
*Presbytery Book of Strathbogie*, 2.
Preston Grange, 122.
*Principles of Political Economy*, (J. S. Mill), 48.
priories, 60.
process of augmentation, 159.
procurations, 25.
produce tithable, 14.
products tithed in England, 13.
Prosser, John, 166.
Purgatory, 64.
purposes of Jewish tithe, 4.
purposes of tithe, 10.

*Quaestiones Romanae* of Plutarch, 3.
Quebec, 15, 111.
Queensberry, Duke of, 132.
Queen Regent at Reformation, 70.
Quiberon, 17.
quoad civilia parishes, 181.
quoad omnia parishes, 181.
quoad sacra parishes, 181.

Rait, Alexander, 126.
Ramsay, 121.
Ramsay, Peter de, Bishop of Aberdeen, 65, 67.
Rannes, 118, 119.
Ranulf of Soulis, 22.
Rathven, 118, 119, 160.
Rathven Manse 1650, 114, 115.
Rating Act 1926, 127.
rationalization of Church of Scotland, 185.
Rayne, 38, 62, 66.
readers, 85.
Rebellion 1715, 93, 119.
Rebellion 1745, 93, 126.
receipt for teinds, 126.
Receiver-General, 162.
*Records of Invercauld*, 88, 115, 117, 126, 127, 128, 156.
Records of teinds destroyed, 16, 17, 120.
rector of parish, 23.
Red Friars, 132.
redemption of standard charge, 171, 172.
redemption of teind, 179.
redemption of teinds 1633, 105, 106.
redemption of teinds rejected by Lords 1925, 174.
Reformation, 36, 38, 44, 52, 60, 69, 77, 79, 82, 83, 87, 88, 89, 93, 94, 110, 126, 127, 129, 130, 149, 178, 184, 186.
reformed clergy, poverty of, 84.
*Registrum Episcopatus Aberdonensis*, 19, 38, 62, 64, 65, 66, 69.
*Reg. Epis. Brech*, 62.
*Reg. Epis, Glas.* 38, 62.
*Reg. Epis. Morav.*, 18, 20, 29, 35, 41, 42, 61, 62, 88.

*Register of Privy Council*, 77, 82, 83, 99.
*Registrum de Kelso*, 19.
relief (in tenure), 67, 99.
remonstrance, letter of 1625, 99.
Renfrewshire, *View of Agriculture*, 148, 157.
rental bolls, 109.
*Rental Book of Coupar Angus*, 25.
Renton, 122.
*Reports to the General Assembly of the Church of Scotland* 1925, 179, 184.
residence in parish compulsory for priest, 59.
Restoration 1660, 16, 111, 115, 122.
revenues of Church at Reformation computed, 83.
Revocation of Charles I, 98, 100, 104.
Revolution 1688, 117, 186.
*Revue trimestrielle canadienne*, 15.
Richmond, 137.
Robert (chaplain), 22.
Robert III (King), 43.
Robert of Loudon, 22.
Robertson, George, 137, 141.
Robertson, Rev. James, 138.
Roger, 156.
Ros, John, 88.
Ross, Bishop of, 80.
Ross, Bishopric, 82.
Ross diocese, 72.
Roman Catholic Relief Act 1829, 164.
Roman Church claims teinds, 179.
Roseneath, 97.
Rothes, Earl of, 100.
Roxburgh, Duke of, 132.
Roxburgh, Lord, 112, 121.
Roxburgh, *View of Agriculture*, 149.
Rullion Green, 112.
rusticus, 22.
Ruthven, James, 120.

sair sanct, 21.
salva rei substantia, 124.
Salvation Army, 164, 175.
Sands, Lord, 161.
Sapphira, 5.
Sardis, 2.
Satan, 75.
Saxony, 9.
Sclattie, 62.
Scone, Abbey, 88.
Scone, Abbot of, 83.
Scot of Braidmeadow, 123.
Scot of Thirlston, 123.
*Scotch Legal Antiquities*, 31, 43.
Scotland and England compared for tithes, 137–54.
Scotland at Reformation, 78.
Scotland, commutation of teinds, 35.
Scotland, poverty of, 47.
Scott, 136.
*Scottish Colonial Schemes*, 112.
Scottish Synods, 25.
Scribes and Pharisees, 4, 5, 6.
Scrogie, William, 114.
seat rents, 182.
second teinds, 37.
Secretary for Scotland, 165, 180.
secundum consuetudinem loci, 123.
seed grain teinded, 49.
Seifvright, William, 2.
Selborne, Earl of, 12.
Selkirk, Earl of, 135.
Selkirkshire, *View of Agriculture*, 150.
*S.E.S.*, 25, 26, 29, 35, 36, 37, 39, 40, 41, 59, 70, 71, 107.
Sepulchre, holy, 32.
Setons, 81.
Shand, Thomas, 111.
Shaw's *Digest*, 135, 136.
Sheriff Court, 38.
Shetland, 137.
Sinclair, Sir John, 137, 150.
Singer, Dr., 147.
*Sinhalese* (*Laws and Customs of*), 2.
Skene, W. F., 89.
Smith, Adam, 46, 48.
'snows', 29.
Society of Antiquaries, 18.
Society of Jesus, 69.
'Sons of Perdition', 31, 35, 37.
soum, 96.
Spalding Club, 2.
Spelman, Sir Henry, 1.
Spence, 120.
spirituality, 24.
Spottiswoode, Archbishop, 95.
spuilzie, 120.
Spynie, Lord, 94.
Stair, Viscount of, 32.
St. Andrews, 20, 22, 60, 85, 136.
St. Andrews, Archbishop of, 71, 78. 80, 88, 94.
St. Andrews, Prior of, 84, 93.
St. Andrews Synod, 59.
St. Columba, 17.
St. Giles, Edinburgh, 83.
*St. Kilda* 1727, 89.
St. Kilda, teinds in, 88.
St. Lambert, 65.
St. Machar, 62, 64, 66.
St. Machar Cathedral, Aberdeen, 69.

St. Mary, 64.
St. Mary's College, St. Andrews, 136.
St. Nicholas Church, Aberdeen, 69, 83, 123.
Smith, Sir George Adam, 166.
Solicitor-General, 180.
Smyth, 136.
Solemn League and Covenant, 112.
Souter, David, 146.
Southesk, Earl of, 112.
Stair, 109, 111.
Stamford, 100.
standard charge a real burden on land, 171.
standardization by election of minister, 177.
standardization of stipend, 167–8.
standardization proposed in 1920, 166.
Standingstones, Caskieben, 111.
State helps Church to collect tithes, 7.
*Statutes of the Church of Scotland*, 36.
sterling, 27.
Stewart, Francis (Earl Bothwell), 81.
Stewart, Lord James, 83.
Stewart, Lord John, 84.
Stewart, Lord Robert, 84.
Stewarts, 81.
stipend, 93, 94, 96, 97, 108, 142, 146.
stipend, augmentation of, 108.
stipend eight chalders, 102, 113.
stipend fixed in 1617, 95.
stipend in victual (1808), 158.
stipend in 1606, 91.
stipend made burden on teinds 1617, 95.
stipend of reformed clergy, 85.
stipends augmented by State, 162.
Stirling, 20.
stock, 109.
stocks and shares, 11.
Stone Circles, 17.
Stone Circles removed in Agriculture, 18.
Strathbogie, 2.
Strathmore, Earl of, 112.
straw teind, 51.
Stronach, George, 2.
Stuart, 121, 122.
Stuarts, 108.
stubble not available for pasture, 51.
surnames, origin of, 23.
surrogatum, 135.
superintendents at Reformation, 85.
Switzerland, 51.

Tabernacle, 3.
tacit relocation, 136.
tacks of teinds, 67, 112.
tacks, restrictions in, 91, 93.
tacksman, 25, 35, 59, 86, 87, 93, 95, 96, 97, 104, 110.
Tarragona, 27.
Tarves, 68.
taxation, national, 83.
taxation, principles of, applied to teinds, 46.
tax-gatherers of Rome, 38.
Teind Act 1424, 35.
Teind Act 1425, 35.
Teind Act 1567, 26.
Teind Act 1808, 158.
Teind Act 1810, 188.
Teind Act 1824, 188.
Teind Act, 27 and 28 Vict., c. 34, 29.
Teind Court, 156, 161, 163.
Teind Legislation 1560–1633, 89.
teind, amount of, 109.
teind in money, 67.
teind, not always one-tenth, 32.
teind payment, banqueting at, 27.
teind payment enforced by Civil Law, 20.
teind records lost, 16, 17, 120.
Teind Roll, 169.
teind-free lands, 31.
teinding, delay in, 107, 109.
teinding, method of, 120.
teinding, method of Act 1579, 90.
teinding, method of Acts 1606 and 1612, 91.
teinding, method of Act 1617, 92.
teinding of animals, 39.
teinds at Reformation, 79.
Teinds Bill 1920, 165, 167, 181.
teinds, blood, 39.
teinds, classification of, 29.
teinds, collecting of, 29.
teinds, commutation of (see valuation), 104, 105, 106, 108, 109, 112.
teinds, dread of, 1788, 155.
teinds due by all, 26.
teinds due in kind, 26.
teinds exhausted, 108.
teinds, great, 30.
teinds industrial, 30.
teinds, leading of, 33, 104.
teinds lost by tacit renunciation, 32.
teinds, misdirection of, 62.
teinds natural, 30.
teinds of Banchory, how divided, 30.
teinds of bishops not redeemable, 105.
teinds of hospitals, &c., 110.
teinds of personal labour, 26.

teinds parsonage, 30.
teinds payable by all classes, 29.
teinds personal, 29.
teinds personal disappear, 29.
teinds predial, 29.
teinds real, 29.
teinds rectorial, 30.
teinds redeemed 1633, 105, 106.
teinds sacramental, 39.
teinds small, 30.
teinds, transport of, 34.
teinds unexhausted, 108, 142, 176.
teinds useful in thirteenth century, 27.
teinds, valuation of, 1633, 105, 106, 107, 108, 109.
teinds valued, 110.
teinds vicarage, 30.
Templars, 31.
Temporality, 24.
Theory of tithes, 14.
*theynus*, 22.
Thirds of Benefices, 85, 86, 91, 94, 95.
Thirlston, 122.
Thomson, Maitland, 82, 83.
Thomson, Rev, John, 139.
Thor the Long, 19.
Tithe Act 1836 (England), 154.
Tithe Act 1891 (England), 154.
*Tithes in Scotland*, 95.
*Tithes too hot to be touched* (Spelman), 1.
tithe, vexatious tax, 52.
Tomintoul, 130.
Town Councils, 129, 182.
transport, 50.
transport of teinds, 46, 132.
*Travels in France*, 32.
Treasury, 127.
Treasury may redeem teinds, 173, 188.
Trustees, General, 168–72, 188.
Trustees will pay stipend, 175.
trustification of the Church of Scotland, 185.
tulchan bishop, 79, 80.
turnip crop, 39.
Tweeddale, 157.
Tynningham, Bishop, 37.
*Tything Table*, 161.

ultimus heres, 110.
Under-Secretary for Scotland, 180.
unexhausted teinds, 156.
Union of Churches, 179.
Union of Crowns, 97.
Union of Parliaments, 119, 126, 178, 187.
Unitarians, 164.
United Free Church, 165, 166, 174.
Unseen Powers, 2.

vagrants at Reformation, 76.
valuation of teinds, 108, 109.
valuation of teinds, deductions in, 136, 137.
Vaus, Margaret, 88.
vicar, 96.
vicar, poverty of, 25, 58, 61.
vicar, stipend for, 65, 68, 72.
vicarage teinds, 24, 121, 123, 126, 134, 137.
vicarage teinds disappear, 161.
vicecomes, 22.
Victoria, Queen and patron, 186.
*Views of Agriculture*, 137–51.
villanus, 22.
Virgin Mary, 19, 62.
Voltaire, 51, 52.

Wales, disestablishment, 179.
war and stipend, 180.
War of Independence (Scotland), 68.
ward in tenure, 67, 99, 102.
Warlie, 135.
waste land developed by monks, 60.
waste land reclaimed, 66.
Watson, 137.
*Wealth of Nations*, 46.
Wellwood, Sir H. M., 127.
Wesleyans, 179.
Whigs, 127.
Whithorn Priory, 94.
William, Bishop of Aberdeen, 69.
William (Chaplain), 22.
William of Hay, 22.
William of Lindesey, 22.
William (son of Freskin), 22.
William the Conqueror, 13.
William the Lion, King, 20, 21, 22, 23, 42, 63.
William and Mary, 117, 118.
Wilson, John, 148.
window tax, 127.
wool mill teind, 36.
wool teind, 41, 42.
Worcester, 112.
Wrights Houses, 120.

Xenophon, 2.

*Year Book of the Church of Scotland* (1886), 187.
York, 61.
York Buildings Company, 133.
Young, Arthur, 32, 123, 137.

Zeus, 2.

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